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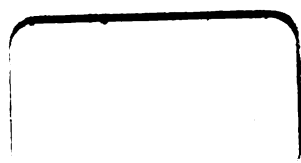
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R E P O R T S
FROM
C O M M I T T E E S:
SEVENTEEN VOLUMES.

—(8.)—

FICTITIOUS VOTES (SCOTLAND).

Session
15 *November* 1837—16 *August* 1838.

VOL. XIV.

1838.

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REPORTS FROM COMMITTEES:

1837-8.

SEVENTEEN VOLUMES:—CONTENTS OF THE EIGHTH VOLUME.

N. B.—*THE* Figures at the beginning of the line, correspond with the N° at the foot of each Report; and the Figures at the end of the line, refer to the MS. Paging of the Volumes arranged for *The House of Commons*.

FICTITIOUS VOTES (SCOTLAND):

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1837, on FICTITIOUS VOTES (SCOTLAND); with APPENDIXES and
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R E P O R T
FROM THE
SELECT COMMITTEE
OF
SESSION 1837-8,
ON
FICTITIOUS VOTES (SCOTLAND),
WITH THE
MINUTES OF EVIDENCE,
AND APPENDIX;

ALSO,
MINUTES OF EVIDENCE
TAKEN BEFORE
SELECT COMMITTEE
IN 1837,

In continuation of the First Report of Evidence, ordered to be printed
18 April 1837:—(Parl. Paper No. 215.)

WITH AN INDEX TO THE WHOLE.

*Ordered, by The House of Commons, to be Printed,
13 and 14 July 1838.*

Martis, 12° die Decembris, 1837.

Ordered, THAT a Select Committee be appointed to inquire how far the intentions of the Reform Act are defeated by the creating and registering Fictitious and Improper Votes in Scotland.

Mercurii, 13° die Decembris 1837.

Ordered, THAT the Committee consist of—

Mr. Horsman.
Lord Stanley.
The Lord Advocate.
Sir William Rae.
Mr. Walter Campbell.
Sir Hugh Campbell.
Mr. Robert Steuart.
Lord Viscount Stormont.

Mr. Divett.
Honble. Mr. Bingham Baring.
Mr. Edward Buller.
Mr. George Hope.
Lord James Stuart.
Mr. Hope Johnstone.
Mr. Charles Buller.

Ordered, THAT the Committee have power to send for Persons, Papers and Records.

Ordered, THAT Five be the Quorum of the said Committee.

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R E P O R T.

(1838.)

THE SELECT COMMITTEE appointed to inquire how far the intentions of the REFORM ACT have been defeated by the creating and registering of FICTITIOUS VOTES in *Scotland*, and who were empowered to report their Observations thereon to THE HOUSE, together with the Minutes of the Evidence taken before them;—HAVE considered the matters referred to them, and agreed to the following R E P O R T :—

YOUR COMMITTEE, looking to the terms of their Order of Reference, although sensible of the difficulty of interpreting the intentions of an Act of Parliament, otherwise than by its express enactments, have felt themselves justified in assuming that the Act contemplated the *bond fide* possession of, or interest in, real property, as the basis of the qualification for the new Constituency; and that persons registered as voters, under the provisions of the Act, not being thus qualified, were to be considered as the “fictitious” votes, to which their attention was called. It was obvious that the temptations to create votes of this description would be the strongest in those counties in which the constituency was the smallest, and the political parties the most equally divided; on which account Your Committee principally directed their inquiries to the counties of Selkirk and Peebles, where, from the causes above mentioned, the system was stated to have been carried to the greatest extent; and though they received some evidence with regard to other counties, they deemed it unnecessary to enter into more extended and minute investigations, conceiving that they should have sufficiently discharged their duty, by ascertaining the various evasions which have been practised in the most prominent examples, and which, under the present state of the law, might be, and probably would be, practised in other counties under similar circumstances.

Your Committee proceed to lay before The House the result of their inquiries :

- 1.—As to the different classes under which the fictitious votes may be arranged.
- 2.—As to the facilities afforded for their introduction by the constitution and practice of the existing courts.
- 3.—As to the means of checking their future introduction by an improved machinery, or by additional restrictions on the franchise.

The fictitious or colourable votes brought under the notice of Your Committee may be classed under the following heads:—first, life-renters; second, proprietors, joint or several; third, joint tenants; and of these, more especially the first. For example, in the county of Selkirk, in 1832, the whole constituency was 180, among whom were very few life-renters, and none were non-resident. In 1836, the constituency had increased to 552, of whom 112 were life-renters, and of these five only were resident. In Peebles, the constituency, in 1832, was 301, of whom the life-renters were eight, and all resident. In 1836, the constituency was 576, of which the life-renters were 100, and only 28 of them resident.

The usual mode of creating these votes (by which a nominal qualification is acquired, without the possession of any real interest), is by the conveyance of a

subject of the requisite value to a friend or dependent for the term of his life. The party acquiring this right is termed a life-renter, and it is a common practice for a number of them to be constituted under one deed; the only restriction as to number being the necessity that the property should be of such a value as to give to each an interest of not less than 10*l.* a year. There seems no reason to doubt that life-rents by grant were a species of property very rare in Scotland previous to the passing of the Reform Bill, and that they have since much increased, in consequence of the political franchise being for the first time annexed to them by that Act. This, in itself, Your Committee do not consider as calling for any interference on their part. But where, as has frequently been the case, the franchise has been obtained by a mere colourable acquisition of such life-rents, they think they ought to direct the attention of The House to the following circumstances, which usually attend the transaction:—The deeds are made out in the last week of January, so as just to complete the six months' possession necessary for registration. The subject disposed of seldom passes into the hands of the life-renters, but remains in the occupation of the disponent, who receives back a lease of it from the disponees, generally of the same date, and always of the same duration, as his own disposition to them. The price, which is fixed by annuity-tables, according to the age of the purchasers, is not paid; but a bill for the amount is given, the interest of which is about equivalent to the rent received by the parties in return. There are few instances of these bills being paid up; nor can it be doubted that payment of them is not expected to be enforced. The transaction, moreover, is not preceded by a search of incumbrances, or any inquiry into the real value of the previous rent, as is invariably the case in real purchases of property. The delivery of the deed, which is essential in law to the completing of a transaction, is virtually evaded, either by the same individual being employed to act as agent for both buyer and seller, or by a mere formal delivery of the disposition being gone through before witnesses; after which it is immediately restored to the party granting it, in whose custody it remains. Lastly, infertment seldom follows on these transactions, though in cases of actual sale it is not only usual, but essential to the security of the buyer.

A considerable addition has also been made to the constituency of some counties by a number of persons uniting to purchase an estate as joint proprietors, of just sufficient value to give to each the legal qualification; but although these transactions have been avowedly for political objects, yet Your Committee cannot recommend any interference with them on the part of the Legislature, in cases where there appears to have been a *bonâ fide* investment. Cases have also been brought before the Committee of individuals making single purchases for the sake of the vote; in which the purchasers, being unprovided with the means of paying, have been assisted with the necessary sum by some political agent or partisan, who takes over the property so acquired a security for the loan advanced. It appears that Agents are regularly employed, not only in looking out for properties to be bought for political purposes, but also in affording the necessary facility by loans to indigent purchasers who are induced to take them. The consequence is, that the vote thus acquired can never afterwards be exercised but at the will of the creditor; he may demand payment of the sum lent by him at any moment; and if his demand be not complied with within six days, he may proceed instantly to attach the person of his debtor, and by a second process to obtain possession of the property. It is obvious then that in the case of a poor man thus situated, neither the interest in the property, nor the vote derived from it, belong to him so much as to his creditor, and that he is a mere tool in the hands of another, who by this species of right acquires over a considerable portion of the constituency a power which may be exercised in a very mischievous and objectionable manner.

It does not appear that the creation of joint tenancies for political purposes has been carried to any great extent; but the evidence which has been given before the Committee goes to show, that if the same rule which has been laid down in the county of Selkirk were also the practice of the other Registration Courts, this mode of adding to the constituency is one which is capable of being turned to very great abuse. It seems to have been there held, that the mere fact of the claimant's

claimant's name being inserted in the lease, is sufficient to establish his character as joint tenant, and entitle him to be enrolled. His legal liability for the rent is considered an ample proof of tenancy, and no question is put as to the reality of his interest in the farm, the part he takes in its cultivation, or his share in the profit or loss affecting it. It is evident that a door is thus opened to fraud, which it rests with the parties themselves to take advantage of to any extent they may require ; and though accidents sometimes, at a subsequent period, may bring to light the real facts of the case, yet these must necessarily be of such rare and uncertain occurrence as to afford no adequate security against the evil.

Your Committee think it necessary to call the attention of The House to the fact, that by the law of Scotland, differing in this respect from England and Ireland, a beneficial interest above all burthens and charges is not held to be essential. It is therefore easy and common for parties to make purchases of property, whether as joint life-renters or proprietors, for the sake of acquiring a vote, and to allow the whole price to remain secured as a debt upon it ; and if a property already burdened with debt can be found, it is looked on as the most desirable of all for a political purchase, inasmuch as there is an abatement of the price in proportion to the amount of debt which still remains secured upon the land, and is transferred with it to the purchaser. If, therefore, the land should be burdened to its full value, it is acquired without the payment of any money whatever. For example, a case was brought before Your Committee of an estate which, having been bought in 1833 for 11,000*l.* or 13,000*l.*, and having been burdened to the extent of 15,000*l.*, independently of interest, became unsaleable in the usual way. This, however, was the fit subject for a political purchase, and accordingly it was bought and made over to 56 life-renters, each acquiring an interest of 10*l.* a year, and though the period of registration had not arrived when the inquiry took place before Your Committee, there can be no doubt of the political object of the transaction. The price named was 16,250*l.* By the terms of all such contracts the seller is bound to clear the land of all burdens before the purchase-money can be demanded ; and as the burdens upon it exceed the value of the property, there is no probability of its being relieved ; and so the life-renters, if enrolled, acquire their right without the payment of any sum whatever.

Your Committee have anxiously sought for the most effectual means of checking the creation of colourable votes under these several denominations of the franchise, and having carefully considered various suggestions which have been made to them, agree in recommending :

- 1.—That all life-rents by grant should be limited to persons being in occupation, either by themselves or tenant, such tenant not being the fiar, or any one holding in the fiar's behoof.
- 2.—That in all cases of proprietorship, whether in fee or life-rent, acquired otherwise than by succession, infestment should be imperative.
- 3.—That a clear beneficial interest of 10*l.* a year, over all burdens and charges, should be proved to be derived from the subject claimed on.
- 4.—That any party claiming as joint tenant should prove, to the satisfaction of the Court, that such joint tenancy involves a real participation of profits and liabilities, sufficient to afford the qualification.

These changes, however, will not be of themselves sufficient to meet the evils complained of. There are circumstances in the construction and practice of the Registration and Appeal Courts, which afford facilities for the creation of these objectionable votes, and which have been made matter, as it appears to Your Committee, of well-founded objection. The principal of these are the admissibility of fresh evidence on Appeal ; the absolute proof required of collusion, which, in some cases, it is impossible to arrive at ; the mode of examination adopted by most of the Sheriffs ; the expense incurred by the summoning of the same witnesses to the Registration Court, and again to the Court of Appeal, often at a very inconvenient distance ; and, lastly, the want of uniformity of decision in the Appeal Courts.

It must be observed, that in Scotland there is not only a court of registration, wherein the Sheriff of the county sits as Judge, but also a court of appeal, consisting of three or more Judges, Sheriffs of the neighbouring counties, before whom the whole case is again gone into, and the same witnesses examined who were examined in the inferior court. It by no means follows, however, that the same evidence is given. The witness remains in court after his own examination is concluded. He is present during the evidence of all the witnesses who succeed him; he hears his own evidence commented on by the Counsel and Judges; and learns which were the weak points of the case, and those on which his testimony was not sufficiently conclusive. On his second appearance, therefore, he is enabled to remedy the deficiency in his former declaration; and thus the case may come before the appeal judges with a new face, and be decided on a statement of facts very different from that which formed the grounds of the judgment they are called on to revise.

It is also necessary to advert to the mode of examination in the Scotch Registration Courts. In England and in Ireland power is given, by express enactment, to the claimant to support his own vote by his own testimony, and he thus, as a matter of course, becomes liable to cross-examination. In the Scotch Reform Act no such power is given; and the claimant is, therefore, placed precisely in the condition of an ordinary suitor in the civil courts, his own evidence not being admissible in his own favour. There exist, however, two cases in which a party interested in a suit may be compelled to give his personal testimony; the one, where the adverse party, having failed in establishing his case, elects to call upon his opponent to verify his claim by reference to his own oath; the other, where, upon suspicion of fraud or collusion, the judge exercises the power of calling the party before him, and subjecting him to a "judicial declaration," involving a full cross-examination. The difference between these two is material; in the one, the party is summoned at the option of his opponent, subjecting a case, otherwise unshaken, to the farther test of the oath of the party interested; and in this case accordingly, the oath, if resorted to at the demand of the opponent, is held to be final and conclusive. In the other, the investigation is required by the judge, a disinterested party; circumstances of suspicion as to the *bonâ fides* of the transaction being the justification of this exercise of his authority; and, in this case, the party is liable to have his statement used against him, while it cannot be made evidence in his favour. It is clear that, in the Registration Courts, recourse to one or other of these modes must frequently be necessary. The title of the claimant is apparently good; the documents are in due form; but there is an allegation, as in the majority of colourable votes, of collusion between the parties who conducted the argument. Of these one is the political Agent, who has been much employed in the manufacture of the kind of vote that is objected to, and knowing from experience the line of examination to which his client and himself will be subjected, he has taken good care that at the time the terms of the conveyance were arranged, not a word should pass between them which can be construed into a secret understanding. The claimant himself is the only other person by whose admission the collusion can be established; and some of the Sheriffs have expressed doubts as to their being empowered, as in the ordinary civil Courts, to have recourse to the judicial declaration. If those doubts be well founded, the only alternative is the reference to the oath of the party, subject to the disadvantage above mentioned, of admitting the answer to be conclusive. That such a test should ever be ventured upon by the opposing party, and that it should be relied upon as an efficient check in ordinary cases, is a strong testimony to the regard paid to the sanctity of an oath in Scotland; and it is in evidence before Your Committee, that it has in some cases proved effectual, while no proof has been brought of the oath having been falsely taken. But the mode of investigation, in matters involving the political franchise, is open to serious objection. The excitement produced in the claimant by a close political contest; the desire to serve or to screen a friend; the instructions under which he may be acting; the irritation caused by a vexatious opposition; the natural eagerness to substantiate a claim once put forward; the impossibility of failure if he can only persuade himself to take the oath required, are all strong temptations to swerve from the exact truth, to which the honest ought not to be subjected; while the obstacle interposed is no obstacle at all to the profligate and unscrupulous. The higher the national

national character stands for the punctual observance of an oath, the greater should be the anxiety of the Legislature to guard against any thing which may have a tendency to weaken or extinguish such feelings.

Your Committee therefore recommend strongly that the present mode of reference to oath should be abolished, and that any doubts which may exist should be set at rest by an enactment declaratory of the competency of the registration, as other civil Courts, when they shall deem such a proceeding to be called for by circumstances, implying collusion or *mala fides*, to direct either the claimant or objector to be judicially examined in regard to the merits of the case.

Another great defect connected with these proceedings is the very serious inconvenience and expense to which both claimants and witnesses are exposed in coming from their own county to the appeal court, and after being thus taken to a distance of 30 or 40, and sometimes in the more northern counties as much as 200 miles, they are frequently detained 10 or 14 days, in order to be re-examined on facts and documents on which they have already once spoken. As might naturally be expected, the individuals thus summoned are often unwilling, and indeed unable, to subject themselves to the double hardship of the journey and the detention; and as, in the absence of any claimant who has been cited, a reference to his oath may be insisted on, and on his failing to appear, his claim must be at once rejected, by these means not only may good voters be frequently kept off the roll, but, in the absence of essential witnesses, bad votes are as easily put on.

The second examination of the same witnesses, in the appeal courts, appears to Your Committee to lead to much unnecessary and vexatious litigation and expense; and it has been suggested to them as desirable that the first examination should be rendered conclusive as to the facts of the case, and that the appeal should be confined to points of law only. The chief difficulty, however, in the way of thus prohibiting absolutely the admission of *viva voce* evidence on appeal, arises from the time which would be consumed if the whole of the evidence were, in the first instance, taken verbatim in the Registration Courts, which would be necessary if all subsequent evidence was absolutely excluded. It seems also open to objection to abolish the appeals altogether in matters whether of law or fact, especially if the registration be considered final, which, if the local court of appeal were completely satisfactory, Your Committee would not hesitate to recommend.

The plan, therefore, that Your Committee would suggest, on the whole, is, that a statement of the case, if appealed against, should be immediately drawn up from the Sheriff's notes, and signed by him in the presence of parties; that either party desiring to add any thing to this statement, as having been omitted by the Sheriff, or incorrectly stated, should be at liberty to do so within a limited time, the Sheriff signing his assent to, or dissent from, the addition made by such party; that this document shall be the sole evidence received in the appeal court, unless the Sheriff shall have dissented from the alteration made, in which case, parties may call the same evidence as before to those facts which it is complained have been omitted or incorrectly stated.

It appears to be a question of doubt, whether under the existing law the Sheriffs have the power of awarding costs against parties in cases unnecessarily appealed; and they have never yet ventured to exercise such a power. Your Committee, however, are of opinion, that unless such discretion be given them, the re-examination of witnesses on appeal may be insisted on to an extent that would render the change they have suggested quite inoperative; and they therefore do not hesitate to recommend, that the Appeal Courts should have the power of awarding full costs against the parties insisting on personal evidence before them, as also in cases where the appeal seems to have been taken without reasonable grounds.

The last of the objections above enumerated has reference to the conflicting decisions given by the different Appeal Courts, an inconvenience which will prob-

bably diminish in process of time from increasing familiarity with the provisions of the statute, and the various cases which may arise, but which is, in some degree, inseparable from the existence of a number of mutually independent tribunals. It has accordingly been suggested to transfer the duties of the Appeal Sheriffs to one of the Lords Ordinary of the Court of Session. There can be no doubt that this transfer would promote uniformity of decision; but Your Committee feel too strongly the injurious consequences which would result to the character of the administration of the law, if the judges of the land were mixed up with questions of political controversy, to recommend the adoption of such a course; and they have therefore sought for the means of obtaining their object without departing from the existing tribunals, which possess some not inconsiderable advantages. The presiding Sheriffs are, in the first instance, all men of legal attainments, accustomed to hold Courts, and to have questions legally argued before them; they are permanent officers, holding their situations for life, and not removable by the Crown; an appeal already lies from the decision of a single Sheriff to a Court composed of several of his professional brethren habitually engaged in adjudging similar cases in adjoining counties; and Your Committee think that much might be done to produce increased uniformity of practice in the whole body, by giving a farther reference to the body of the Sheriffs at large in certain cases. With this view, their attention has been directed to one of the provisions of the new "Sheriffs of Scotland Bill," which is now in progress through Your House, whereby it is enacted, that the Sheriffs of Scotland shall hold meetings periodically in Edinburgh, to revise the procedure of the Sheriffs' Courts. It seems to Your Committee that at these meetings the conflicting decisions of the Appeal Courts on claims for enrolment might also fall to be considered; and, with that view, making it imperative on the Sheriffs to hold such meetings, it should be rendered competent for any party against whom a decision had been given, differing from what had been given on the same point in another Appeal Court, to bring that discrepancy under the knowledge of the court by whom his case has been decided, and require that the case shall be submitted for the consideration of the general meeting of the Sheriffs. Your Committee do not mean to advise, that the decision come to by the general meeting shall in any way affect the case already disposed of; but they would hope it could hardly fail to influence the future decisions of the Appeal Courts.

All the Petitions which have been presented to Your House and referred to the Committee, complain very strongly of the great hardship the Petitioners experience from the large proportion of non-resident voters registered among them; and representing this as a grievance, inasmuch as the rights acquired by such persons are solely for political purposes, and in order to counteract the opinions of the inhabitants, they pray the Legislature to adopt some means to protect the interests of the natural and resident constituency against the incursions of strangers, who have no feeling or object in common with the county.

Your Committee have not extended their inquiries later than the registration of 1836, which was the one immediately preceding their appointment; but they have every reason to suppose that the system complained of is becoming generally prevalent. It is true, also, as stated by the Petitioners, that the non-resident voters, thus enrolled, are a large proportion totally unconnected with the county. They are usually lawyers and writers, resident in Edinburgh, and keen political partisans; and many of them have acquired votes in several counties lying contiguous to one another, and which may all be reached from Edinburgh in one day if necessary. Your Committee are not insensible to the jealousy naturally entertained by the resident electors, especially in the smaller counties, of the influence which may be exercised over their local elections by a great extension of this class of voters; but Your Committee have not felt warranted in recommending an alteration of the franchise in so important a particular, in which the intentions of the Reform Act are clear and indisputable; and the objections which they would feel in any case to the principle of insisting on residence as a necessary qualification for a county voter, are much increased by the consideration, that in adopting it they would not only be departing from the acknowledged intention of the Scotch Reform Bill, but would also be placing the Scotch constituency, in an essential point, upon a footing widely different in principle from the English and the Irish. While, however, they have felt themselves bound to protect the rights

rights of *bonâ fide* electors, non-resident as well as resident, they cannot but hope that the restrictions which they have ventured to recommend will materially diminish the inconvenience complained of, by reducing the proportion borne by the non-resident to the resident electors, and by effecting that reduction principally in that portion of the non-resident, who, having no natural connexion with the county, obtain a franchise, more or less colourable, for the promotion of *general* political objects, and who are not unreasonably viewed with jealousy by the local constituencies.

13 *July* 1838.

PROCEEDINGS OF THE COMMITTEE.

Veneris, 15^o die Decembris, 1837.

PRESENT:

Mr. Divett.	Mr. George Hope.
The Lord Advocate.	Mr. Horsman.
Lord James Stuart.	Mr. Robert Steuart.

Mr. Horsman called to the Chair.

Mercurii, 7^o die Februarii, 1838.

Mr. Horsman.

Mr. Robert Steuart.	Lord James Stuart.
Mr. Edward Buller.	Sir Hugh Campbell.
Mr. Divett.	Mr. Bingham Baring.
Mr. Hope Johnstone.	Mr. George Hope.

Veneris, 9^o die Februarii, 1838.

Mr. Horsman.

Mr. E. Buller.	Mr. George Hope.
Mr. Divett.	Lord James Stuart.

Lunæ, 12^o die Februarii, 1838.

Mr. Horsman.

Mr. Divett.	Mr. George Hope.
Mr. Hope Johnstone.	Mr. Robert Steuart.
Mr. Walter Campbell.	Mr. E. Buller.

Jovis, 22^o die Februarii, 1838.

Mr. Horsman.

The Lord Advocate.	Mr. Hope Johnstone.
Mr. Divett.	Mr. George Hope.
Mr. Bingham Baring.	Mr. Edward Buller.

Mercurii, 4^o die Aprilis, 1838.

Mr. Horsman.

Mr. Hope Johnstone.	The Lord Advocate.
Mr. George Hope.	Lord Stanley.
Mr. Divett.	Mr. Robert Steuart.

Jovis, 3^o die Maii, 1838.

Mr. Horsman.

Mr. Edward Buller.	Mr. Bingham Baring.
Mr. Hope Johnstone.	Mr. Robert Steuart.
Lord Stanley.	Mr. George Hope.
Sir William Rae.	Mr. Divett.
Lord James Stuart.	

Mercurii, 9^o die Maii, 1838.

Mr. Horsman.

Mr. Walter Campbell.	Mr. George Hope.
Mr. Divett.	The Lord Advocate.
Lord Stanley.	Lord James Stuart.
Mr. Robert Steuart.	Sir William Rae.

Jovis, 10^o die Maii, 1838.

Mr. Horsman.

Mr. Bingham Baring.	Mr. Hope Johnstone.
Mr. George Hope.	Lord Stanley.
Mr. Divett.	Sir William Rae.
Lord James Stuart.	Mr. Robert Steuart.
The Lord Advocate.	Mr. Edward Buller.

Martis, 15^o die Maii, 1838.

Mr. Horsman.

Mr. Edward Buller.
Mr. Walter Campbell.
Mr. Hope Johnstone.
The Lord Advocate.
Mr. Robert Stuart.

Mr. Bingham Baring.
Mr. Divett.
Mr. George Hope.
Lord Stanley.
Sir William Rae.

Martis, 3^o die Julii, 1838.

Mr. Horsman.

Lord Stanley.
Mr. George Hope.
Lord James Stuart.
Mr. Robert Stuart.
Mr. Hope Johnstone.
Mr. Edward Buller.

Mr. Divett.
The Lord Advocate.
Mr. Bingham Baring.
Sir William Rae.
Lord Stormont.
Mr. Walter Campbell.

Mercurii, 4^o die Julii, 1838.

Mr. Horsman.

Mr. Walter Campbell.
Mr. Bingham Baring.
Mr. George Hope.
Sir William Rae.
Lord James Stuart.

Mr. Divett.
Lord Stanley.
Mr. Hope Johnstone.
Sir Hugh Campbell.

Jovis, 5^o die Julii, 1838.

Mr. Horsman.

Lord Stanley.
Mr. Walter Campbell.
Mr. Bingham Baring.
Sir William Rae.
Mr. Hope Johnstone.
Mr. Edward Buller.

Mr. Divett.
Lord James Stuart.
Lord Stormont.
Mr. George Hope.
The Lord Advocate.
Sir Hugh Campbell.

Last paragraph of Report read.

Amendment proposed (by Lord Stanley), To leave out all the words after "necessary," in l. 9, and to insert the following words instead thereof:—"Your Committee are not insensible of the jealousy naturally entertained by the resident electors, especially in the smaller counties, of the influence which may be exercised over their local elections by a great extension of this class of voters; but Your Committee have not felt warranted in recommending an alteration of the franchise in so important a particular, in which the intentions of the Reform Act are clear and indisputable, and the objections which they would feel in any case to the principle of insisting on residence as a necessary qualification for a county voter are much increased by the consideration, that in adopting it they would not only be departing from the acknowledged intentions of the Scotch Reform Bill, but would also be placing the Scotch constituency in an essential point upon a footing widely different in principle from the English and the Irish: while, however, they have felt themselves bound to protect the rights of *bonâ fide* electors, non-resident as well as resident, they cannot but hope that the restrictions which they have ventured to recommend will materially diminish the inconvenience complained of by reducing the proportion borne by the non-resident to the resident electors, and by effecting that reduction, principally in that portion of the non-resident who, having no natural connexion with the county, obtain a franchise more or less colourable for the promotion of general political objects, and who are not unreasonably received with jealousy by the local constituencies."

Question put, That the words proposed to be left out stand part;

The Committee divided.

Ayes (4.)

The Lord Advocate.
Lord James Stuart.
Mr. Walter Campbell.
Mr. Divett.

Noes (8.)

Mr. Bingham Baring.
Mr. George Hope.
Lord Stanley.
Mr. Hope Johnstone.
Lord Stormont.
Sir William Rae.
Sir Hugh Campbell.
Mr. Edward Buller.

So it passed in the negative.
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Amendment

Amendment read: whereupon Motion made (by Lord Stanley), That those words be there added. Amendment proposed (by Mr. Walter Campbell), To leave out all the words after "Committee," in order to insert the following:—"recommend to The House that all electors shall have a *bonâ fide* residence within the county, and shall have an establishment or personally reside within the county for not less than one month in each year, unless such elector shall possess an estate within the county of not less than £.100 per annum."

Question put, That the words proposed to be left out stand part;

The Committee divided.

Ayes (9.)

Mr. Divett.
Mr. Bingham Baring.
Mr. George Hope.
Lord Stanley.
Mr. Hope Johnstone.
Lord Stormont.
Sir William Rae.
Sir Hugh Campbell.
Mr. Edward Buller.

Noes (3.)

The Lord Advocate.
Lord James Stuart.
Mr. Walter Campbell.

So it was resolved in the affirmative.

Motion made (by Lord Advocate), That not more than two joint-tenants be registered on one farm, and that all joint life-rents be abolished.

Question put, and negatived.

Report, as amended, read 2°, and agreed to.

Chairman to report same to The House, together with the Minutes of Evidence.

MINUTES OF EVIDENCE

TAKEN IN 1837,

(In Continuation of the First Report.)

Questions 7424 to 11742.

Ordered, to be Printed, 14 July 1838.

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MINUTES OF EVIDENCE.

Veneris, 17^o die Martii, 1837.

MEMBERS PRESENT.

Sir William Rae.
Lord Advocate.

Mr. Divett.
Mr. Warburton.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. Donald Horne, again called in; and further Examined.

7424. *Chairman.*] YOU commenced as agent in Roxburghshire in 1833, did you not?—I was employed by Lord John Scott, as agent, on the 16th of January 1833, for himself and the conservative party in that county. Mr. Donald Horne.
17 March 1837.

7425. You have continued so up to the present time, have you not?—I have continued so up to the period of the starting of a fresh candidate; I have had no professional employment since.

7426. Up to what period have you continued?—To January last.

7427. Since last January you have ceased to be employed as agent in Roxburghshire?—Since the end of last January I have not been employed as agent for the conservatives of the county of Roxburgh, and I have desired all the local agents to transmit their bills, in order to their being settled.

7428. Has the same system been going on in Roxburghshire which you described as going on in Selkirkshire, of acquiring properties to create votes for political purposes?—I have not described any system in Selkirkshire of acquiring properties exclusively for political purposes; and I am not aware of any such system in the county of Roxburgh.

7429. *Lord Advocate.*] Did you acquire any properties in Roxburghshire in 1832 with a view of creating votes?—No, I did not.

7430. Did you acquire any in 1833?—Not with a view of creating votes.

7431. Did you acquire any properties on which votes were afterwards created?—I acquired a property for my firm, and also a property for myself, on which I have since erected a residence for the summer accommodation of my family, on parts of both which properties qualifications have been created.

7432. *Chairman.*] Are you yourself inrolled upon those properties?—I am myself inrolled upon my residence of Benrigg, in the county of Roxburgh, where my family reside during the summer season.

7433. *Lord Advocate.*] Did you acquire that entirely with a view of building a residence, or had you in contemplation the making votes upon it when you purchased it?—I had that property in view as a residence for some time before I acquired it; I considered it rather large for my purpose; I was obliged to purchase detached fields along with it; I sold off those detached fields to three conservatives and to one liberal, the Provost of Leith, one of the Lord Advocate's constituents.

7434. Has the Provost of Leith a considerable estate in that neighbourhood?—He has a farm in that neighbourhood.

7435. *Chairman.*] Was he on the roll previously in that county?—Yes, he was.

7436. *Lord Advocate.*] Was he inrolled upon the property you sold him?—No, he was inrolled before I sold him that property.

7437. He was upon the old roll, was he not, for many years?—I think he was upon the old roll.

7438. *Chairman.*] When did you acquire that property?—Some time in the year 1834, but I cannot recollect the precise date.

7439. At what Registration Court were you inrolled upon it?—I was inrolled upon that property in the year 1835.

7440. Will you tell us the names of the other gentlemen?—I sold some detached fields to Messrs. John and William Ballantyne, at a price of from 720*l.* to 750*l.*

7441. Then the other parties?—I sold another field to Mr. Forbes, of Callender, for a price of about 450*l.*

7442. I merely want the names of the third?—I sold to no other party.

7443. You said three conservatives?—The two Ballantynes and Forbes.

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7444. Were

Mr. Donald Horne.

17 March 1837.

7444. Were there no other persons inrolled on that property?—Yes, upon the remaining part of it, that belonged to myself.

7445. Who was that?—My brother and my partner, Mr. Rose and Mr. Melvill.

7446. In life-rent or fee?—These were life-renters.

7447. Previously to that, were you on the roll in the county?—I was.

7448. What property were you inrolled on previously?—I purchased a property near the residence of my brother-in-law, Mr. Ogleby, in the parish of Ancrum, in the end of January 1833, for which I paid from 350*l.* to 400*l.*

7449. From whom did you buy that property?—From the titles it appeared it was originally purchased from Mr. Hamilton, who was a teacher in Edinburgh.

7450. Was that the property you were inrolled on previously to your being inrolled on Benrigg, in 1835, of which we spoke before?—No; in the intermediate period I was inrolled as a partner of the firm of Horne & Rose, on the property of Darlings Haugh, which we had purchased in the meantime.

7451. Were you and Mr. Rose joint owners of that property?—We were.

7452. Were you inrolled on that property in 1834?—Yes, without objection.

7453. As joint proprietors?—As joint owners.

7454. What has become of that property since?—We sold off a part of it to Mr. Gibson, of Ladhope, a neighbouring proprietor, and we still retain the fee of the property; it is being feued out for building, and will be a capital speculation.

7455. Have a number of voters been inrolled on it?—There have been four voters inrolled on a part of it as life-renters in the year 1836.

7456. Were any inrolled on it in 1835?—We feued out certain portions for building, at a feu-duty at the rate of about 15*l.* an acre, and the feuars built houses on it; I do not recollect whether any one was registered as feuair, holding of us in 1835, but if the name or names be given me, I shall be able to answer the question.

7457. My question was this; in 1834, you and Mr. Rose, I understand, were the only two persons who became qualified on that property?—Yes.

7458. I wish to know how many persons became qualified on it in 1835?—No more on the right of property; there may have been feuars.

7459. Either feuars, or proprietors, or in any manner, I wish to know how many persons have become qualified on that property which you and Mr. Rose possessed in 1834?—I do not think that any other person was registered on that property in any way in 1835, but if a name is given me I can trace it.

7460. Then at this moment, as far you can recollect, there are only four life-renters inrolled on that property?—At this moment, in so far as I can recollect, there are only four life-renters inrolled upon feu-duties of that property; but in 1836, Mr. Gibson, a feuair from us, was inrolled on the houses which he had built on his part of that property; I do not recollect whether there was any other.

7461. But by the feuing going on on that property I presume it would yield a good many votes?—That depends on the value of the houses to be built by the feuars.

7462. It is probable?—I hope many houses may be built upon that property capable of affording the franchise, because the more valuable these houses are, the greater is the security for the payment of the feu-duties; these lands have been more than once advertised to be feued out, and we have never yet declined any offer made to us for a feu, provided the feu-duty was adequate.

7463. Then previously to that you were registered upon the property which you bought in the beginning of 1833 from Mr. Hamilton, I think you said?—I was registered in 1833, as I have already stated, upon a property acquired by me in the end of January 1833.

7464. Was that the property which did belong to Mr. Hamilton, on which you were inrolled as the joint proprietor along with other individuals?—No, I was sole proprietor.

7465. Did you purchase it along with any other person?—No, not my part of it.

7466. Were there only three individuals inrolled as joint proprietors in that year on a property acquired from Mr. Hamilton?—There were two individuals registered that year, and their qualifications were separate properties which had previously belonged to them, and as joint owners of a field which had belonged to Mr. Hamilton; but no part of the property which I had purchased.

7467. Did you conduct the purchase for them?—No.

7468. What

7468. What do you say was the date of that transaction with Mr. Hamilton?—*Mr. Donald Horne.*
The date of my disposition of the property is the 30th of January 1833; I have not the deed, but am now speaking from the notes on the claims. 17 March 1837.

7469. Then, previous to the registration of 1833, you have had nothing to do with purchasing any property from Mr. Hamilton, except what you qualified on yourself at that period?—No, I had nothing to do with purchasing any property from Mr. Hamilton; but I think that Mr. Hamilton sold the property in question previously to Mr. Gourlay; I did not make the purchase, but I think the conveyance was prepared in my chambers at Edinburgh.

7470. Do you remember what was about the date of that purchase?—I think it was some time about Martinmas of 1832.

7471. Were some individuals inrolled on that property which they purchased from Mr. Hamilton in 1833?—Mr. Gourlay was not inrolled; I was inrolled upon a part of it, by a conveyance from Mr. Gourlay, if Mr. Hamilton had disposed the property to him; but I do not recollect the circumstances, and I have none of the deeds in my possession, having subsequently sold the property.

7472. Were other individuals inrolled on the property purchased by Mr. Gourlay in 1833?—None, except myself and the other two individuals to whom I have referred, whose qualifications were made up of a part of that property.

7473. Do you remember from whom you have acquired your right, whether from Mr. Gourlay or Mr. Hamilton?—My impression is that the conveyance to me was by Mr. Gourlay.

7474. Do you remember with whom you conducted the purchase?—I think with Mr. Wood, of Jedburgh, about the end of January 1833, as I was at Jedburgh on the evening of the 22d and morning of the 23d of January 1833.

7475. Is Mr. Gourlay a private client of yours?—Mr. Gourlay was the manager to my brother-in-law, Mr. Ogelby, of Chester, and I forget whether it was Mr. Gourlay, senior, or Mr. Gourlay, junior, who was the party to the deeds.

7476. He conducted the purchase in the first instance from Mr. Hamilton?—Mr. Gourlay, junior, was the person who conducted the purchase in the first place with Mr. Hamilton, and I think the missive of sale between them was written by a Mr. Lees, of Musselburgh.

7477. The disposition, I think, was written in your office?—I think the disposition was written in my office, if it was written at all.

7478. Was the disposition to these three individuals also written in your office?—No.

7479. Then you were not in the Registration Court in 1832?—No; I was engaged in 1832 in Ross-shire, not Roxburghshire.

7480. In 1833 you were engaged in the Registration Court, Roxburghshire?—I was professionally engaged in all the Registration Courts of Roxburghshire in 1833.

7481. Can you tell us the general character of the constituency in 1832, especially as regards life-renters and joint proprietors?—No, I think I have not the means of doing so; and I do not think that a correct analysis can be made of the constituency, without the attendance of the sheriff's clerk, who has the registration books, or without the examination of the local agents on each side, from the four different districts into which the county is divided for the purpose of registration.

7482. Were there any life-renters inrolled in 1833?—There were.

7483. Can you tell us how many?—I cannot venture; in making up my lists, Mr. Thompson and I did not at first agree, even as to the number of life-renters in Melrose district.

7484. Can you state yourself how many life-renters you know were put on in 1833 by persons who had obtained life-rents, not in virtue of their office, but by purchase or grant?—There were life-renters in 1833, both single and joint, by purchase or grant; but I cannot at present tell the numbers.

7485. Can you tell us any of the other names, so as to bring us near the number?—I think there were none in the Melrose district; I think there were four in the Hawick district, to wit, John Laing, designed as residing at Newcastle, and two persons of the name of Scott, upon the liberal side, and a person of the name of Liddell, on the conservative side. In the Kelso district there were two persons of the name of Ormiston registered as joint life-renters, qualified by their father, and registered in the Kelso district as life-renters. They were objected to in the Registration Court; one of them was examined upon oath, and both were admitted.

7486. Were those the only two in the Kelso district?—There were single life-renters; I think there was a person of the name of Robert Hardy also.

Mr. Donald Horne.

17 March 1837.

7487. Any other?—I am not aware of any other.

7488. Was Christopher Douglas a life-renter in that year?—No; he was registered as owner of a third part of certain lauds belonging to his father without objection.

7489. He was registered as a joint proprietor in that year, was he?—The words of his claim are, “as proprietor or owner *pro indiviso* of a third part of the lands of Chester House.”

7490. You have another district still?—Yes; in Jedburgh district there were two joint life-renters and one single life-renter registered by the conservative interest, and one single life-renter by the whigs.

7491. What are their names?—The joint life-renters are John Elliott and Robert Elliott, under a grant from their father, and the single life-renter is John Scott, also under a grant from his father, all on the conservative side; and the other is William Rutherford Ancrum, on the liberal side.

7492. I think you have divided them, as you have gone on, into their respective parties; you have stated that there was John Lang and the two Scotts in the Hawick district who were of the liberal party?—Yes.

7493. And also William Rutherford in the Jedburgh district?—Yes.

7494. Except those four, did you take charge of the registration of the rest?—I took charge of the registration of all on the conservative side.

7495. I mean, were all the rest on the conservative side?—They are so marked in my list.

7496. Can you tell us whether there are any more liberals?—I have said I cannot perfectly ascertain; there are no more in my list.

7497. Then were there any cases of joint proprietorship registered in 1833?—There were, upon both sides.

7498. Many cases, were there?—There is in the Melrose district Robert Don Gillan Ferguson and Allan Frier, both clerks of Mr. Spence, one of the whig agents at Melrose; and there is upon the conservative side, in the same district, George Stewart, junior, and George Stewart, tertius, upon disposition by his grandfather, George Stewart, junior, being previously on the roll; in the Jedburgh district there were five joint owners registered upon an estate in that neighbourhood under settlements; and there were three registered as joint owners under purchases, all on the conservative side, besides Davidson and the other I have already noticed as part joint owners of Hamilton's property, of which I spoke in the early part of my examination; there were none on the liberal side in that district; in the Hawick district I have two of the name of Potts on the conservative side, and one of the name of Scott for the liberal side.

7499. Who is he joint proprietor with?—I have not the means of stating; his claim bears that he is registered on the half *pro indiviso* of certain houses in the village of Denholm.

7500. Do you know whether his joint property was acquired by purchase, or whether it might be acquired by succession?—His claim does not specify this; and I have no other means of knowing.

7501. Now go to the fourth district?—In the Kelso district there were no joint owners registered in 1833 upon the liberal side; but there were six joint owners upon the conservative side, four of them being under family settlements.

7502. Then there were two by purchase?—I really cannot say whether they were by purchase or not; they are described as joint owners, and there was no objection given in to their registration; so that I have no note of the nature of the title produced.

7503. What are their names?—Their names are William Smith and Walter Kerr, both residing in Kelso.

7504. You are not able to tell us with any certainty the number of joint proprietors and life-renters registered in that year?—I have not been able to make up any abstract of the numbers.

7505. Now, of those cases of life-rent or joint proprietorship that you have told us of, were you acquainted with the circumstances under which they were acquired, those of your own party which you took charge of in the Registration Courts?—I do not think I was acquainted with the circumstances of any of them till the deeds were handed to me for registration in the Registration Courts; I knew perhaps, previously, of the intention of some of the parties to qualify their sons.

7506. I want to know whether any of those properties were acquired for political purposes?—I think it is probable that the grant was made for the purpose of conferring

conferring the franchise, but I do not know any thing of my own knowledge on the subject. Mr. Donald Horne.

7507. At this moment people are acquiring properties in Roxburghshire to a great extent for political purposes?—I should think not, at this moment. 17 March 1837.

7508. Have they been since 1833?—In 1833, after the Registration Courts, the conservatives and the liberals began to make purchases in the county, and it was carried to some extent on both sides, as the proceedings of the Registration Courts of 1834 will show.

7509. Were these purchases principally made by the political agents of the parties?—I cannot speak to that; there were political agents on both sides in each of the four districts of the county.

7510. What I want to know is, whether you can assist us to discover whether these purchases were made for political objects?—I cannot speak to all of them, but my impression is, that in some of the purchases, the purchasers had it in view to obtain the franchise.

7511. Is that also your opinion of the purchases that were made and registered in 1833?—No, I do not know the particulars of the purchases referred to, any further than the purchase I made myself.

7512. Then you cannot state whether, in 1833, there were any properties acquired for political objects?—In making the purchase for myself, I was actuated by a desire to get the best investment for my capital that I could, and also by a desire to possess the franchise in the county.

7513. Can you speak of any others besides yourself?—From my own knowledge I cannot.

7514. Can you state whether or not any of the purchases in 1833 were made for political objects besides your own case?—My acquaintance with the purchases made in 1833 does not enable me to give a specific answer to the question.

7515. Mr. Warburton.] Do you know any instances, other than your own, in which the purchase was made with a political object in that year?—Of my own knowledge, I do not recollect any instances in that year, but it is probable that the purchasers were actuated by a desire to possess the political franchise.

7516. Chairman.] I will state to you an instance—whether or not the two Potts's were registered in that year, as joint proprietors?—They were, in Hawick district.

7517. Are they not nephews of the political agent?—They are relations of the political agent, but what the connexion is I do not know; I did not see the deeds in those cases till in the Registration Court.

7518. They acquired that qualification from their uncle, did they not?—Yes, from their connexion.

7519. Do you know whether or not that was acquired for a political purpose?—I think it probable that it was, but I do not know it.

7520. Were there any cases of joint tenants in 1833?—In the Melrose district, there was one joint tenant, John Roberts, under long leases by the liberal party; and one agricultural joint tenant, J. Renwick, by the conservative party, registered in that year. In the Jedburgh district there were five agricultural joint tenants registered in 1833, three of them for the conservatives, and one for the liberals; with regard to the other, I cannot answer to which party he belonged; I have not the means. In the Hawick district there were two joint tenants under long leases, registered by the liberals, and none by the conservatives, and there were six agricultural joint tenants registered by the conservatives in that year. In the Kelso district, there were, I think, no joint tenants under long leases registered on either side, but there were four joint tenants under agricultural leases registered by the conservatives.

7521. Were any of the joint tenants you have mentioned registered that year assumed into current leases?—I cannot say, without the examination of my books, which will occupy some time. From recollection I think some of them had been assumed into current leases.

7522. Then, in 1834, did the number of life-renters and joint proprietors increase in the county generally?—They did.

7523. To a great extent?—They did to a considerable extent, on both sides.

7524. And have they been going on increasing since?—Not in the same ratio.

7525. Considerably beyond what they were in 1833, in the proportions?—In 1834 and 1835 there were more than there were any previous year.

7526. Have joint proprietors and life-renters been put on in large batches since 1833?—Joint proprietors and life-renters have been registered in batches during the last three years, and I am ready to state the particulars.

Mr. Donald Horne.

17 March 1837.

7527. As commonly as in Selkirk?—I think not; but the answer must be taken as relative to the extent of the two counties.

7528. Then there is one mode of acquiring property, of which we saw one or two instances in Selkirk, of which I wish to ask you, as to Roxburghshire, whether or not it is common to acquire property, where the price of the property remains a burthen on the property?—I think not by the conservative party.

7529. Have you yourself been engaged in the purchase of properties in which the security has been taken over the property for the amount of the price, and remained a burthen on it?—I think not for the amount of the price.

7530. Have you taken security over properties in many cases acquired for franchise, where you advanced the money, as you did in Selkirk?—Our house has advanced several sums on the security of properties purchased, particularly in Kelso.

7531. You have mentioned to us two cases in Selkirk, in which you had advanced money on the security of the properties purchased by the claimants?—Yes, I did mention, I think, two cases in which my partner took securities over properties in Selkirk for money advanced by a client.

7532. How do you mean that your partner, Mr. Rose, took securities; because in your previous examination, I understood the house advanced them on behalf of a lady?—It was the lady's money that was advanced, and not the house advanced money on behalf of the lady.

7533. But your partner took the security as trustee?—As trustee in his own name on behalf of a client.

7534. And in those cases, if I recollect right, no enfeoffment followed?—My answer was, that I do not recollect whether enfeoffment followed or not.

7535. Then there were several cases in which you took securities of the same kind in the Kelso district?—There were several cases in the Kelso district, in which my partner took securities of the same kind for a private client's money; and in those cases I think he was enfeoffed.

7536. Do you know the case of Richard Muir and Allan Shankley, who were registered in 1834?—Allan Shankley and Richard Muir were registered as joint owners of property in Kelso, in 1834.

7537. Did you hold a security over that property?—I think my partner does, but I have not the state of the securities here.

7538. Did you advance money for that purchase to those individuals?—The money was advanced by our house from a private client.

7539. And the security was taken to your partner?—Yes, or to the firm.

7540. As trustees of that client?—The security does not bear so; the security was taken to my partner, Mr. Rose, and I believe he was enfeoffed.

7541. How came the security not to be taken directly at the time?—That is the usual practice with us where the money cannot be lent out in one sum.

7542. Was the client the same client who advanced the money in the previous case in Selkirk?—I think it was.

7543. Was the client aware of the manner in which the money was to be applied?—I have no doubt of that.

7544. I wish to know whether or not your client was aware that the money was to be applied to any political purposes?—I do not admit that it was applied to political purposes; a security was taken for the money.

7545. Were these not properties that were bought very much with a view of obtaining a franchise?—I believe the obtaining of the franchise was a motive for making the purchase.

7546. Was the obtaining the franchise any motive to your lending the money?—I have stated that the money was lent by a private client; we considered the security ample, and professionally we were no doubt anxious to promote the conservative cause in the county of Roxburgh; but if the security were not considered ample, we should not have so invested the money.

7547. Was your client aware that that money was to be applied to promote the conservative cause in Roxburgh?—I think not.

7548. When you applied this money to promote the conservative cause in Roxburgh, did you do so from your own power as agent, or had you any authority from your client?—If I exceeded my duty as agent for my private or individual clients, I should be responsible to them for it.

Martis, 21^o die Martii, 1837.

MEMBERS PRESENT.

Mr. Bingham Baring.
Mr. Divett.

The Lord Advocate.
Mr. Edward Dunlop.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Mr. Robert Gillon Thompson, called in ; and Examined.

7549. *Chairman.*] YOU are a writer, residing at Melrose?—Yes.

7550. You are the political agent for the liberal party in Roxburghshire?—Yes, for the district of Melrose ; I was also agent for the district of Jedburgh, in the county of Roxburgh, in the year 1833.

7551. Have you a general acquaintance with the county of Roxburgh?—Yes ; generally we know more of our own district, but we exchange lists of voters with each other, and I know how the county stands generally.

7552. When did you first become a political agent in the county?—I became political agent in 1831 ; I did not act as agent for Captain Elliott at that time ; I acted for another person, who was a liberal.

7553. Were you well acquainted with the state of the constituency at the general registration in the year 1832, subsequently to the passing of the Reform Bill?—Yes.

7554. You are well acquainted with the state of the constituency, and have been ever since that period?—Yes, I have.

7555. Does the character of the constituency remain as to the qualifications the same as it was in 1832?—No.

7556. What change has taken place?—There are more joint tenancies than there were in 1832, and there are more life-rents by grants in 1836 than in 1832 ; I am not aware of any simple life-rents by grant in 1832 ; there were also a great many more joint proprietors in 1836 than in 1832.

7557. Have qualifications been acquired in Roxburghshire subsequently to 1832, for political purposes?—A great number of purchases, both in life-rent and in fee, have been made, for political purposes, in my opinion.

7558. Were any of the constituency that were inrolled in 1832, inrolled on property acquired for political purposes?—No ; I think the registration in 1832 was a pure registration, with one exception ; I think Mr. George Scott, of Jedburgh, got a renunciation of his mother's life-rent over property in Ancrum, in the Jedburgh district, after the passing of the Reform Bill.

7559. He was inrolled in 1833, was he?—In the year 1832, the date of the deed was after the passing of the Reform Bill, but he was put on by arrangement ; there was another claim of ours which was thought to be objectionable, and we allowed George Scott to get on in the same way as that one.

7560. Whose claim was George Scott ; yours or theirs?—It was theirs ; we compromised it for another claim of ours.

7561. What was the other claim?—It was given in exchange for Alexander Watt, of Ancrum.

7562. In 1832 were there any cases of life-rent by grant in the county of Roxburgh?—I am not aware of any in my practice, unless where it was conjoined with a fee ; I have known a purchase of a life-rent and fee, but no purchase of a simple life-rent.

7563. Had you known of any case previous to 1832, where a life-rent was conveyed, and the fee reserved?—No ; life-rents, previous to that time, were generally by reservation, or settlements on marriage and office.

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7564. Have

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7564. Have they become very common since then?—Yes, very common.

7565. When did they commence?—In 1833.

7566. Have you any knowledge of other districts in the county?—Generally, I know the character of the individuals; I cannot speak positively to them all.

7567. Were there many of those cases put on in 1833?—There were two cases of joint life-rents by Mr. Elliot, of Harwood; those two life-rents were created by a grant of old Mr. Elliot in favour of his two sons; a gratuitous conveyance.

7568. Were there many others?—There was another by Mr. Scott, of Teviot Bank, also in favour of his son; a single life-rent, and gratuitous.

7569. Do you know the case of a life-renter put on by your party, William Rutherford, in the district of Jedburgh?—It was not a life-rent; I put him on in 1833; his claim was as the husband of a life-renter, but his right was established by a mutual settlement between husband and wife; he claimed in 1832 for the same property, and was rejected on account of the value.

7570. Do you know of two men of the name of Scott, and one of the name of Laing, put on by your party?—I know that three individuals of that name were enrolled in 1833, in the Hawick district.

7571. Can you state whether or not they were the sort of life-renters which were introduced at that time?—I have seen Mr. Wilson's statement, and he does not put them down as life-renters.

7572. Who is Mr. Wilson?—He acts with me.

7573. Have you any knowledge that they were simple life-rents?—From his statement I should conceive they were not.

7574. Have there been any batches of life-renters or joint life-renters put on since that period?—In 1834 there were batches.

7575. Can you tell us, generally, any system pursued in putting on those batches as to the arrangement made about the price?—One system is, to adopt the annuity tables; the first batch of that kind I saw was the Abbotsford cases.

7576. Was that the first case in which the system of putting on a number of life-renters by a calculation on annuity tables was introduced?—Yes.

7577. How many parties were there in that case?—It was a conveyance of a part of the estate of Abbotsford, which was let to a Miss Ferguson, at the rent of about 65*l.*; that property was conveyed to six individuals.

7578. Who were they; tell us the whole of the particulars?—It was John Walker Arnott, writer to the signet; Isaac Bailey, writer to the signet, both of Edinburgh; John G. Lockhart, editor of the *Quarterly Review*, London; George Lyon, Lyndors House, in Fife; I think John Stewart Lyon, of Kirkmichael; Charles Scott, brother of Sir Walter Scott, London: those six individuals acquired a simple life-rent from the present Sir Walter Scott, all at separate prices; and in the margin of the deed, when it was produced in the Registration Court, there was marked opposite each party's name the price they were to pay, and Mr. Horne stated in the court, that those prices had been calculated by an annuity office.

7579. Have you any means of knowing whether those prices were paid or not?—I have been told by an individual I can rely upon, Mr. John Tulloch, that Mr. George Lion told him he had not paid it.

7580. Has he given a bill for it?—I should think not.

7581. *Lord Advocate.*] Could that have been inquired into in the court?—Yes, it could; but it was not, out of respect for the family of Sir Walter Scott.

7582. *Chairman.*] Is it not the practice in acquiring a qualification of this nature to pay by bills?—I believe it is.

7583. Have you any reason to know that that was not followed in this case?—I have no reason to know whether it was followed or not; but from the respectability of the parties I should think it was not.

7584. Has the system of making batches in that manner by annuity tables since become very common?—Very common.

7585. You stated also there were cases of joint tenancies which have become very common since 1833?—Yes.

7586. Do you mean from that that any joint tenancies have been made for political purposes?—It is my impression that many of them have been.

7587. Have you any reason to know that they have been so?—I have reason to know that they have been so, for they are far more general than they were.

7588. Are there any instances of tenants being assumed in current leases?—There are not many in the Melrose district; there are a number in the districts of Hawick and Jedburgh.

7589. You

7589. You have stated it has become common in the county?—Yes.

7590. Were there any instances of tenancies being assumed into current leases previously to the Reform Bill?—I am not aware of any case at present.

7591. Are you aware that two men of the name of Acheson were assumed into a current lease by their father?—From a conversation with the agent at Hawick, I have reason to think they were; and in looking at the printed table, my impression is borne out; I find in the parish of Cavers, in the district of Hawick, that William Acheson, of Linhope, was inrolled in 1832, and he altered his registration in 1833, and my impression is, he altered his registration in 1833 to make room for the other two individuals, of the name of William and George Acheson, who were inrolled in 1834 upon as much of the lease as gave them a qualification; if I recollect right, it was a 7th or 8th share.

7592. Did he claim in a different character in 1833 to what he had done in 1832?—My impression is that he restricted it in 1833.

7593. How is it designated?—Merely William Acheson, of Linhope; but before he could have granted them this he must have registered anew.

7594. From the registration can you see whether he claims as joint tenant in 1833, having previously been inrolled as sole tenant?—That he claimed as joint tenant is my impression; but I cannot see it in the list before me; it is borne out by the printed list.

7595. Whose tenant was he at that time?—I forget the landlord; I think it was the Duke of Buccleuch.

7596. Do you know that the two were also inrolled in the county of Selkirk?—I think George Acheson is; but I could not speak positively to that.

7597. Then are qualifications also acquired by joint proprietors common now in the county of Roxburgh?—Yes.

7598. Previous to that did you know any instances of joint purchasers of property not connected with each other by trade as a company or relationship?—No.

7599. Since that it has become very common?—Yes, it has.

7600. Tell us when they commenced?—The first purchase that was made that I recollect, for the purpose of making a joint owner, purely for qualification, occurred between the Appeal Court in 1832, and the election of 1832; the purchase was from a person of the name of Hamilton of Ancrum, teacher in Edinburgh; that purchase was made, I think, in the month of October or November 1832, and at the Registration Court in 1833 there was a disposition put in to support the claim of Mr. Donald Horne; the part of the property he claims is the dwelling-house and garden; there was another disposition to three individuals jointly; their names were Mr. Seatt, a preacher; a person of the name of Davidson; and a person of the name of Potts.

7601. Those four individuals were all inrolled upon that property, purchased of Mr. Hamilton?—Yes; three joint proprietors in part, and Mr. Horne, sole proprietor of the dwelling-house and garden.

7602. Do you know who conducted the purchase of the property?—I know that Mr. Hamilton was a pledged voter of Mr. Elliott's, and that the property was purchased by the opposite side, to disfranchise him, and to make votes, as we understood.

7603. Who was the party that managed that purchase?—I am not quite aware, but in my conversation with Mr. Hamilton he told me that Mr. Horne was the person that managed it; he told me that Mr. Horne had promised to give it him back, which he had never done; that it might not have been purchased for Mr. Horne, but my impression was that it was, and in conversation with Mr. Hamilton he led me to believe so, though he did not say so positively.

7604. Did Mr. Hamilton tell you of any person with whom he had treated about the purchase?—He did not mention who was the direct purchaser from him; but when he was speaking of selling the property, and depriving himself of his vote, he always spoke of Mr. Horne as the person who purchased, but it was generally understood it was purchased by the opposite party.

7605. Mr. Horne is not registered upon that property?—No, I believe not now.

7606. Has Mr. Horne been inrolled upon more than one subject since that; did he not purchase the property called Darlingshaugh?—Yes, in 1834.

7607. Was he inrolled for that?—Yes.

7608. Was that a purchase for mere political purposes?—I should think it was bought

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bought for political purposes, because he has turned it into political purposes; he inrolled both himself and his partner, Mr. Rose, upon it; and after that he began to feu out the ground for buildings, and I think the principal individuals who feu upon it are all of his own party.

7609. Do those feuars obtain a qualification?—They build, and obtain a qualification by building.

7610. *Lord Advocate.*] Was not it a profitable way of employing his capital?—Yes, most profitable.

7611. Might he not have adopted it with a view to the increased value of the property alone?—He might; but he has conveyed it away in life-rents since; he has put on four life-renters, and since that every use that has been made of it seems to be to increase his own party; first feuing it to his friends, and inrolling them in the houses, and inrolling the life-renters.

7612. *Chairman.*] Can you say there is any distinction as to the feuars?—No, only from what we have seen; his own party are the feuars.

7613. *Mr. B. Baring.*] Have you any reason to think he would refuse a good offer, if it was from the other side?—The agents employed are great partisans, and they would rather prefer a conservative to a whig.

7614. If you had the management of the property, should you not have a predilection?—If I was employed for another, I should not have any predilection at all.

7615. With equal offers?—Yes, I should prefer a whig, in that case.

7616. This system is not concealed at all, of creating votes for political purposes?—No; it is quite open now.

7617. No party conceals it?—No; we are making votes as fast as we can on both sides now.

7618. *Chairman.*] Since that period, what has been done?—Since that period Mr. Horne bought the estate of Benrigg, in the parish of St. Boswell's.

7619. Is he now inrolled upon that?—Yes, upon part of the estate; the mansion-house and field around it, the garden and offices.

7620. Are there other individuals inrolled upon the rest?—Part of it he sold to Mr. White, of Fens, and another part to another person.

7621. *Lord Advocate.*] Did Mr. Horne sell part of that property to Mr. White?—He did.

7622. He had no political motive in doing that?—No; Mr. White was anxious to get it, in order to square off his estate of Fens.

7623. Are there other individuals inrolled upon other parts of it?—Yes; several are inrolled as life-renters.

7624. *Lord Advocate.*] Mr. White might have made votes if he chose?—Yes, but he has made none; he never made any.

7625. *Chairman.*] In the year 1833, did Mr. Ogilvie, of Chesters, put in his claim to vote as proprietor?—Yes, as proprietor of his mansion-house at Chesters and policy, exclusive of his other part of the estate.

7626. Mr. Ogilvie is Mr. Horne's brother-in-law?—Yes.

7627. Has he a large property in the county?—Yes.

7628. But in voting he restricted himself to the mansion-house?—Yes, and I think the policy.

7629. Is that a usual way of a person claiming who has a large property?—Yes, if they mean to give out the property in other votes; I recollect that Mr. Bruce did the same; I believe there have been life-renters made by him.

7630. And you judge from this, that Mr. Ogilvie intended to make other votes?—Yes.

7631. Has that turned out to be the case?—Yes.

7632. *Mr. B. Baring.*] In making claims, is it usual to claim on the whole estate; is it not sufficient to have what is requisite to give a qualification?—You always restrict it, if you mean to operate upon it, that you may not lose your vote.

7633. Do you not restrict the description generally?—Here it is restricted to the mansion-house.

7634. Is it not the practice merely to state the name of one farm, supposing it to be sufficient to give a qualification?—I would do so in general; I think it the best way of inrolment.

7635. *Lord Advocate.*] That was not the former practice?—No.

7636. *Mr. B. Baring.*] Is it not a more convenient practice?—Yes; and I would adopt it now.

7637. *Chairman.*]

7637. *Chairman.*] At the time that Mr. Ogilvie claimed in this manner, was it an unusual mode?—Yes, it raised a suspicion he was going to make votes upon the estate.

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7638. Is that borne out by the fact?—Yes, he has made votes.

7639. How many?—Two he made in 1834, and more in 1835; I think three or four.

7640. You have the power by the practice of the Registration Court to be inrolled upon a property, although there should be a burthen upon it fully equal to its value?—Yes.

7641. Is that commonly done?—Yes, now.

7642. Do you know of many instances in which it has been done?—I know several instances.

7643. Do you speak of yourself or your opponents?—Both sides.

7644. Have you done it yourself?—Yes.

7645. Tell us some cases in which you have done it yourself, where the property has been purchased, and the price has been allowed to remain a burthen on the property?—I made a purchase in October 1833 to meet some of the large purchases in the district of Jedburgh; I purchased a property from a person of the name of Mercer, who had been inrolled that year by Lord John Scott's conservative agent; the price was 255*l.*; I took the conveyance in my own name, and was enfeoffed; I then borrowed the money on my own personal security and the security of the property to the full extent, 255*l.*

7646. Did you convey it?—I enfeoffed the lender of the money, then I conveyed this property to three individuals who held small properties, value about 7*l.*, and that joint property enabled them all three to be inrolled.

7647. Who was the person who lent the money?—A person of the name of Pringle, Galashiels, a corn-dealer.

7648. Did he lend it for a political purpose?—He was not aware that it was for that purpose; he got my personal security.

7649. Was he a private client of yours?—I have sold him property before, but we got the loan through his agent, Mr. Elliot Anderson.

7650. He lent it you for the sake of the security?—Yes, he was not aware at the time of the object.

7651. Are there many instances in which you have allowed the price to remain a burthen upon the property?—There was another purchase of property made by Mr. J. Spence and three brothers of the name of Brodie; the price was 800*l.* and we borrowed, through Mr. Robert White, of Edinburgh, 800*l.* upon it, and those four individuals granted their personal obligation, and conveyed the property as an additional security?—I considered 800*l.* the full value of it.

7652. Can you state any other case?—In the beginning of 1835 one of those four individuals expressed a wish to give up his qualification; he was under a conservative landlord, and he thought it would do him harm; we wished to make as much of the property as we could, and we got the other three to convey the whole of the property to 10 individuals, each of whom held property to the extent of some seven or eight pounds, and their share of the joint property enabled them to be inrolled.

7653. Mr. B. Baring.] Had they themselves any real interest in the property?—They were enfeoffed, and they borrowed the money on their personal obligation.

7654. Did they receive any rent?—I am not aware that the rents have been paid, but they are liable for the 800*l.*

7655. Are the rents beyond the amount of the interest?—Yes, but I am not aware that they have been paid; I am speaking of Messrs. Brodie & Spence; I have paid a half-year's rent to the present joint proprietors; the difference between the rents and the interest and the expense of collection and management, was about 7*l.*; and each of the ten who had a tenth share, got about 12*s.* 6*d.* or 12*s.* 9*d.* for the half-year's rent, and those who had a twentieth share got one-half of that; I settled half a year's rent about two months after Whitsunday, after it became due.

7656. *Chairman.*] Do you remember the case of twelve persons in 1835?—This is that case.

7657. Did they themselves pay any sum of money?—None; the 800*l.* was allowed to lie a burthen upon the property.

7658. So that it is a profitable transaction to them?—Yes.

7659. The loss is to the person who advanced the money?—The loss is not to

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the person who lent the money, because the property is good enough for the security.

7660. The loss is to the party who had the power of retaining the property, and drawing the difference between the rent and the interest of the money borrowed?—Yes, and the loss, the risk of loss and deterioration.

7661. And the advantage is to those 12 persons who got this good thing?—Yes; but if the property loses in value, the parties are liable for the value; they take it under that agreement.

7662. Every person who purchases property purchases under that obligation; they run no greater risk than any other purchaser of property?—Yes, they are liable to pay the 800*l.*; the property is liable to be deteriorated in value, and if it is, they are liable for it.

7663. *Lord Advocate.*] Must the original purchasers suffer any actual loss?—No, because they were liable for the 800*l.*, the full value of the property, and they were relieved by the 12; they came into their shoes; the interest of the money is a great deal less than a person ought to draw who lets houses; when you draw four per cent. for money lent, you ought to draw six per cent. for houses, and therefore they pocket more than is required to pay the interest, and no person, except in Selkirk, would purchase houses at four per cent.

7664. There are the expenses of repair and collection?—Yes, houses in good condition ought to yield about six.

7665. If they are in an indifferent condition, what ought they to yield?—I have seen a very bad payment at 15 per cent.

7666. From houses?—Yes.

7667. *Chairman.*] Will you state any other case in which the price has remained a burthen upon the property, and in which you have been engaged?—There is another case, in 1834, where the price was declared a real burthen; the case of young Lilliesleap and Andrew Cochran.

7668. What was the price of that?—One hundred and eighty pounds.

7669. Was the whole of it allowed to remain as a burthen?—Yes, the whole was reserved by the grant.

7670. From whom was the money borrowed?—A Mrs. Frere, a private client of our own.

7671. Was the lender of the money aware of the object for which it was borrowed?—She had lent the money previously upon the property, and not for a political purpose; and, for security, she got an absolute disposition: the 180*l.* was the full value, and she, with the consent of the proprietor, conveyed it to those two, under the burthen of the price.

7672. Was the money lent by her on that occasion for a political purpose?—I do not think she knew any thing about it; she was a private client of ours.

7673. To whom was the security taken in all the cases you have mentioned?—To the private client who had lent the money.

7674. Are there any other cases of the same kind?—There is another case of a joint purchase in 1834; Mr. Mean was the proprietor of the land of Harlees; he conveyed four-fifths of his property to four of his sons at the price of 1,600*l.*; that price was declared a real burthen in the conveyance; the sons let four-fifths shares to the father at 64*l.*, which was the interest at four per cent.; the rent in that case just meets the interest.

7675. Tell us any other case, just the price and the burthen; did not the two Elliotts buy some property?—Yes; the price was 500*l.*; and we borrowed for Alexander Elliott and Russell Elliott, first 400*l.*, and then 100*l.*, making 500*l.*

7676. Was there any security taken for it?—Yes, an heritable security over the property; I consider the sum borrowed the value of the property.

7677. Did you obtain the money for them?—Yes, we obtained it from Mr. James Brodie, a client of ours, who is a conservative, but I do not think he was aware it was for political purposes.

7678. Was there also the case of David Drysdale?—Yes.

7679. What was the price of that?—Fifteen hundred pounds; we had lent previously upon it 700*l.*, which we borrowed from a private client of ours, Miss Cockeram, previously to selling the property to Drysdale, and for other individuals; there was 500*l.* borrowed of Robert Haldane, making the whole 1,200*l.*, I sold that property to two of the individuals, Henderson and Scott; and Mr. Douglas, who was the proprietor at that time, sold other three shares to persons of the name of Drysdale and Andrew Storey Ogle, both of Glasgow, and

Archibald

Archibald Douglas, cattle-dealer; they agreed to relieve Douglas of the heritable debt of 1,200*l.*, and to pay 60*l.* each.

7680. The price still remains a burthen upon the property?—Yes, to the extent of the heritable debt.

7681. *Mr. Baring.*] Which of the parties are resident?—Archibald Douglas is resident, all the others are non-resident.

7682. *Chairman.*] Do those exhaust all the cases of property upon which heritable securities have been taken?—No; there is Benjamin Bell, of Edinburgh, and others upon that property; we lent Mr. Douglas, previously to selling to the Bells, 1,400*l.*

7683. *Mr. Baring.*] What year was that?—Eighteen hundred and thirty-five.

7684. *Chairman.*] Does that loan remain a burthen on the property?—Yes, it does, and each of the six parties paid down to Douglas 50*l.*, the difference between loan and price.

7685. Are they enfeoffed in this property?—Yes, all of them.

7686. Who lent the money?—Mr. Drummond, a gentleman in Jamaica, a private client of our own, lent through his father.

7687. Whose name is the security taken in?—In the name of the lender of the money.

7688. *Lord Advocate.*] Is the security good?—The personal obligation is good.

7689. It is an unexceptionable security?—Yes, and the father, who acts for the son, is perfectly satisfied with it.

7690. *Mr. Baring.*] Are the six parties all non-resident?—Yes, all of them.

7691. Should you say the property is under a burthen of 1,400*l.*?—Yes, that conveyed to the Bells, and the other property conveyed to Drysdale under a burthen of 1,200*l.*

7692. In the case of the property conveyed to the Bells, was the purchase-money paid?—Fifty pounds were paid by each of the parties; it was paid down in cash.

7693. Do they pay four per cent. interest?—Yes.

7694. What rent do they receive?—The rent is about between 70*l.* and 75*l.*; I draw the rents for them, pay the public burthens and the interest.

7695. Have you had any settlement with them?—I have not had a settlement; I have been requested to send a statement of the account to the Bells, but have not had time to prepare it; not having much money to pay them, I thought a settlement of little consequence.

7696. In all these cases you have mentioned, has the money been lent by private clients who had that money to lend, and lent it for the sake of the security, and not for political purposes?—Yes.

7697. Has the security been taken to the person who lent the money?—Yes.

7698. Do you know of any cases of which you can speak positively, of conveyances that have been made by the other party, where the money was a burthen?—Yes, in 1834, Andrew Curle, of Cromarty, purchased a small property at Les-sudden; and I observe, to enable him to pay the price, at least I understand so from the record which I searched lately, I observed he borrowed from the conservative agent, Mr. Erskine, 70*l.*; the seisin is dated 6th June 1834, in favour of James Erskine, the conservative agent in Melrose, and proceeds on the bond of disposition in security, by Andrew Curle, which is dated the 17th May 1834.

7699. You searched the record?—Yes.

7700. Was that with the view to discover on what properties the securities had been given?—Yes.

7701. Did you find many properties of that kind?—Yes, not so many in my own district of Melrose, but I found many taken in the name of Mr. Rose, Mr. Horne's partner.

7702. Have you got a list of those securities, or a note of them?—I have a note of them, tested by Mr. Adam Paterson, who is very accurate, and I recognize the names of individuals here which I saw in the record.

7703. Is it a certified extract from the registry?—Yes, and so far as I can judge from my recollection and my memoranda, I think it is correct; there are burthens which are not here.

7704. *Lord Advocate.*] It is correct as far as it goes?—Yes, it is certified by Adam Paterson, and I think it is correct.

7705. Did Mr. Adam Paterson give it you?—Yes.

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7706. Does it contain a number of seisins taken in favour of the holders of heritable securities?—It contains a number of seisins for loans in favour of the conservative agents, Mr. Curle, Mr. Erskine and Mr. Rose, the partner of Mr. Horne.

7707. Having received this from Mr. Paterson, you have also looked into the records, and they confirm its accuracy?—Yes, they confirm its accuracy.

[*The Witness delivered in the following Paper:*]

EXCERPTS from MINUTE BOOK of the RECORD of SASINES for Roxburghshire (and other Counties) kept at Kelso.

Roxburghshire, 17 February 1834, between ten and eleven, forenoon.

SEISIN dated 5 February 1834, in favour of Richard Muir and Allan Shankly, both residing in Kelso, of a tenement, yard and pertinents, at the east end of the Horse Market, in the town and parish of Kelso, proceeding upon a disposition dated 23 January 1834, granted by Thomas Mitchell, draper, in Kelso, trustee for the creditors of Mrs. Rachael Johnston, or Rutherford, widow of the deceased John Rutherford, tailor, in Kelso. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 5 February 1834, in favour of James Rose, esquire, writer to the signet, of a tenement, yard and pertinents, at the east end of the Horse Market, in the town and parish of Kelso, in security of the sum of 300*l.* sterling annual rent, penalty, &c., proceeding upon a bond and disposition in security, dated 30 January 1834, granted by Richard Muir and Allan Shankly, both residing in Kelso. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die, one and two, afternoon.

SEISIN dated 4 February 1834, in favour of James Curry, vintner, in Kelso, of a new house, area in front of the same, and back close, &c., at the Cuckold Slap, in the town of Kelso and parish thereof, proceeding upon a disposition dated 29 and 30 January 1834, granted by William Porteous, wheel-wright, in Kelso, with consent of John Smith, writer there. Presented by William Smith, writer in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 4 February 1834, in favour of James Rose, esquire, writer to His Majesty's signet, of a new house, area in front of the same, back close, &c., at the Cuckold Slap, in the town and parish of Kelso, in security of the sum of 180*l.* sterling, annual rent, penalty, &c., proceeding upon a bond and disposition in security, dated 30 January 1834; granted by James Curry, vintner, in Kelso. Presented by William Smith, writer in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 4 February 1834, in favour of David Mickle, chaise-driver in Kelso, of a new house, garden at the end thereof, front area and back close, lying at the Cuckold Slap, in the town and parish of Kelso, proceeding upon a disposition dated 29 and 30 January 1834; granted by William Porteous, wheel-wright in Kelso, with consent of John Smith, writer there. Presented by William Smith, writer in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 4 February 1834, in favour of James Rose, esquire, writer to the signet, of a new house, garden at the end thereof, front area and back close, lying at the Cuckold Slap, in the town and parish of Kelso, in security of the sum of 220*l.* annual rent, penalty, &c. proceeding upon a bond and disposition in security, dated 30 January 1834; granted by David Mickle, chaise-driver in Kelso. Presented by William Smith, writer in Kelso.

(signed) William Smith.
John Smith.

N.B. There is a sasine the same day in favour of William Allan, messenger at arms. Kelso; and a sasine on a bond by him to James Rose, W. S., for 70*l.*; but this is afterwards discharged.

Roxburghshire,

Roxburghshire, 4 March 1834, between twelve, noon, and one, afternoon.

SEISIN dated 21 February 1834, in favour of Peter Johnston, clerk to Adam Yule, vintner, in Kelso, Ralph Kerse, fisherman, residing at Birgham, and Charles Hossack, baker, in Kelso, of a tenement of land in the town-head of Kelso, with yard thereto belonging, also a piece of ground in the back part of the town-head of Kelso, called the Crofts, with houses, &c., all in the town and parish of Kelso; proceeding upon a disposition dated 30 January 1834; granted by James Hunter, writer in Kelso. Presented by Patrick Wilson, writer, in Kelso.

(signed) *Patrick Wilson.*
John Smith.

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Roxburghshire, eodem die et tempore.

SEISIN dated 21 February 1834, in favour of James Rose, esquire, writer to the signet, of a tenement of land in the town-head of Kelso, with yard thereto belonging, also a piece of ground in the back part of the town-head of Kelso, called the Crofts, with houses, &c., all in the town and parish of Kelso, in security of the sum of 600 *l.* sterling annual rent, penalty, &c.; proceeding upon a bond and disposition in security, dated 14 February 1834; granted by Peter Johnson, clerk to Adam Yule, vintner, in Kelso, Ralph Kerse, fisherman, at Birgham, and Charles Hossack, baker, in Kelso. Presented by Patrick Wilson, writer, in Kelso.

(signed) *Patrick Wilson.*
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 21 February 1834, in favour of Allan Martin, grocer, in Kelso, and John Ormston, shoemaker, there, of two dwelling-houses in the east end of the Mid-row in the town of Kelso, with the area in front of the same, in the parish of Kelso. Proceeding upon a disposition dated 30 January 1834; granted by James Pyle, corn-merchant, in Kelso. Presented by Patrick Wilson, writer, in Kelso.

(signed) *Patrick Wilson.*
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 21 February 1834, in favour of James Rose, esquire, writer to the signet, of two dwelling-houses in the east end of the Mid-row of Kelso, with the area in front of the same, in the parish of Kelso, in security of the sum of 430 *l.* sterling, annual rent, penalty, &c. Proceeding upon a bond and disposition in security, dated 17 February 1834. Granted by Allan Martin, grocer, in Kelso, and John Ormston, shoemaker, there. Presented by Patrick Wilson, writer, in Kelso.

(signed) *Patrick Wilson.*
John Smith.

Roxburghshire, eodem die, between two and three, afternoon.

SEISIN dated 26 February 1834, in favour of James Rose, esquire, writer to the signet, of all and whole a north half-tenement in Roxburgh-street of Kelso, with back-yard, in security of the sum of 100 *l.* sterling, annual rent, penalty, &c.; proceeding upon a bond and disposition in security, dated 26 February 1834, granted by Andrew Turner, slater, in Kelso, and feuar there; presented by William Scott, writer, in Kelso.

(signed) *William Scott.*
John Smith.

Roxburghshire, 29th March 1834, between four and five, afternoon.

SEISIN dated 18 March 1834, in favour of James Rose, writer to the signet, of a tenement and yard, and garden, &c., at the east end of the town of Kelso, in the parish of Kelso, in security of the sum of 770 *l.* sterling, annual rent, penalty, &c., proceeding upon a bond and disposition in security, dated 1st March 1834, granted by James Turnbull, vintner, at Carfrae Mill, Daniel Taylor, tenant, in George Field, and George Taylor, vintner, in Whiteburn; presented by William Smith, writer, in Kelso.

(signed) *William Smith.*
John Smith.

Roxburghshire, 16th June 1834, between nine and ten, forenoon.

SEISIN dated 11 June 1834, in favour of James Curle, writer, in Melrose, of certain lands, crofts, houses, meadows, moss and others, situated in and about the town and territory of Midlem and parish of Bowden, in security of the sum of 2,700 *l.* sterling, annual rent, penalty, &c., proceeding upon a disposition and assignation in security, dated 14 May 1834, granted by Miss Mary Stewart, of Castle-Stewart, residing in No. 45, Queen-street, Edinburgh, conveying to the said James Curle, a bond and disposition in security over the said subjects, for the said sum, dated 14 July 1824; granted by Andrew Buchan, portioner, of Midlem, and seisins thereon, in favour of the said Mary Stewart; dated 14th, and registered

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tered at Edinburgh 17 July 1824, and dated 27 February and registered at Edinburgh 6 March 1826. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, 5th July 1834, between seven and eight, afternoon.

SEISIN dated 6 June 1834, in favour of Andrew Curle, hedger, residing at Belses, of certain thatched cottages on the north side of Lessudden-town-street, with gardens, &c., behind the same, in the parish of Lessudden, proceeding on a disposition dated 30 January 1834, granted by the now deceased Reverend Peter Craw, minister of Saint Boswell's. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, eodem die et tempore.

SEISIN dated 6 June 1834, in favour of James Erskine, writer, residing in Melrose, of certain thatched cottages on the north side of Lessudden-town-street, with garden, &c. behind the same, in the parish of Lessudden, in security of 70 *l.* sterling, interest, &c., proceeding on a bond and disposition in security, dated 17 May 1834; granted by Andrew Curle, hedger, residing at Belses. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, 8 September 1834, between seven and eight, afternoon.

SEISIN dated 15 July 1834, in favour of James Erskine, writer, in Melrose, of a piece of ground in Darlingshaugh, with houses, &c., in security of 90 *l.* annual rent, &c. proceeding on a bond and disposition in security, dated 3 March 1834, granted by John Dickson, mason, residing in Gattonside. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, 17th October 1834, between four and five, afternoon.

SEISIN dated 4 October 1834, in favour of James Rose, writer to the signet, of a dwelling-house, workshops, and wood-yard in front thereof, in the town and parish of Kelso, in security of the sum of 350 *l.* sterling, annual rent, penalty, &c. proceeding on a bond and disposition in security, dated 2 October 1834, granted by William Davidson and Alexander Anderson, wrights, in Kelso. Presented by William Scott, writer, in Kelso.

(signed) William Scott.
John Smith.

Roxburghshire, 29th June 1835, between four and five, afternoon.

DEED of RESTRICTION and RENUNCIATION, dated 3 October 1834, granted by James Curle, writer, in Melrose, of the sum of 2,700 *l.* sterling annual rent, penalty, &c. contained in and due by a bond and disposition in security over *inter alia* certain parts and portions of the estate now known by the name of *Templehall*, being the inclosures called Bankfoot, North Wheat-lands, South Wheat-lands, North and South Flatts, with lands, &c. now purchased by Thomas Henderson, tenant in Boon, George Henderson, junior, tenant in Huntly Wood, and Alexander Cunninghame, tenant in Carterhaugh, all in the town and territory of Midlem and parish of Bowden, dated 4 July 1824, granted by Andrew Buchan, portioner, at Midlem, to Miss Mary Stewart of Castle-Stewart, now or lately residing in No. 55, Queen-street, Edinburgh, and two seisins thereon, dated 14 July 1824 and 27 February 1826, and registered 17 July 1824 and 6 March 1826 respectively, assignation thereof by the said Mary Stewart to the said James Curle, dated 14 May 1834, and seisin thereon, dated 11th and registered at Kelso 16 June 1834; but reserving in full force the said bond and disposition in security for the said sums and all that has followed thereon, in so far as regards the other subjects therein mentioned. Presented by William Smith, writer, in Kelso.

(signed) William Smith.
John Smith.

Roxburghshire, 11 June 1836, between ten and eleven, forenoon.

DISCHARGE and DEED of RESTRICTION dated 31 May 1836, granted by James Rose, writer to the signet, of the sum of 200 *l.* sterling, annual rent, penalty, &c., being one-third part of the sum of 600 *l.* sterling annual rent, penalty, &c. contained in and due by a bond and disposition in security of date 14 February 1834, over the just and equal third share, *pro indiviso*, of a tenement of land in the town-head of Kelso, with yard, &c., and of a piece of ground at Crofts, all in the parish of Kelso, granted by Peter Johnstone, clerk, to Adam Yule, vintner, in Kelso, Ralph Kerse, fisherman, residing at Birgham, and Charles Hossack, baker, in Kelso, to the said James Rose; but only in so far as regards the *pro indiviso* third part or share of the said subjects formerly belonging to the said Charles Hossack, now sold to Robert Brunlies, ropemaker, in Kelso, and reserving entire the said bond

bond and disposition in security and seisin thereon, dated 21 February and registered at Kelso 4 March 1834, to the extent of the balance of 400*l.* annual rent, &c. over the remaining two-thirds *pro indiviso* of the said subjects.

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Roxburghshire, 29th June 1836, between one and two, afternoon.

SEISIN dated 20 June 1836, in favour of James Rose, writer to the signet, of a tenement, with bake-house, &c. lying at the Scaddadam, in the town and parish of Kelso, in security of 100*l.* annual rent, penalty, &c., proceeding on a bond and disposition in security, dated 17th, 18th and 20th June 1836, granted by Andrew Gray, baker, in Kelso, James Gray, baker, in Bingham, and William Gray, residing at Hounslow.

Roxburghshire, 5 February 1836, between eleven, forenoon, and twelve, noon.

DISCHARGE and RENUCIATION, dated 6th January 1836, granted by James Rose, writer to the signet, of the sum of 70*l.* sterling, annual rent, penalty, &c. contained in and due by a bond and disposition in security, over a low thatched house, next the High-street, with two cot-houses, &c., lying at the Cuckold Slap, in the ward and parish of Kelso, granted by William Allan, messenger at arms, residing in Kelso, to the said James Rose, of date 30th January 1834, and seisin thereon, dated 4th, and registered at Kelso, 17th February 1834.

Roxburghshire, eodem die et tempore.

DISCHARGE and RENUCIATION and DEED of RESTRICTION, dated 19 & 26 January 1836, granted by Sir Charles Kerr, of Gateslaw, knight, and Jane Leaden Kerr, daughter of Agnes Leaden, or Leyden, presently residing in Kelso, and William Leaden Kerr, son of the said Agnes Leaden, or Leyden, with the special advice of the said Agnes Leaden, or Leyden, of the sum of 200*l.* sterling, annual rent, penalty, &c., contained in and due by a bond and disposition in security, of date the 22d day of January 1835, granted by William Allan, messenger at arms, residing in Kelso, in favour of the said Jane Leyden Kerr, &c., over a low thatched house, next the High-street, with two cot-houses, &c. lying at the Cuckold Slap, in the town and parish of Kelso, and seisin thereon, dated 3d, and registered at Kelso 7th February 1835; but this discharge only is granted in so far as concerns one of the new dwelling-houses therein described as having been lately built on the premises by the said William Allan, and now sold to James Nesbit, esquire, London, and preserving the said bond, &c. over the rest of the subjects therein disposed in security.

N. B.—The foregoing excerpts are complete copies verbatim of the particular entries in the minute book to which they refer.

I, *Adam Paterson*, writer to the signet, and notary public, do hereby certify and attest, that the foregoing excerpts, consisting of 17 pages, each page of which is subscribed by me, are faithfully and correctly copied from the minute book of the register of seisins, reversions, &c. kept at Kelso, for the shires of Roxburgh, Selkirk and Peebles, the same having been carefully compared by me with the said minute book. Given under my hand at Edinburgh, the 22d day of February 1836 years.

Adam Paterson.

7708. Those are all cases in which feoffments must have been taken?—Yes.

7709. Do you know of any other cases that are not there?—Yes; there is one case of George Mark, and James Mark, his son, inrolled in 1834, borrowed from James Erskine, the conservative agent, 450*l.* (which I consider the full value of the property) on the property for which they were inrolled in 1834.

7710. *Mr. Baring.*] According to the present state of the law these burthens would be no bar to the claim of voting?—No; burthens are specially excepted by the Reform Act.

7711. *Chairman.*] Those you have given in refer principally to one district?—Kelso and Melrose, the two districts.

7712. Do you believe that this exhausts the securities of that kind in the county?—No; I think there are a great many more securities in Jedburgh and in Hawick besides.

7713. I am speaking of heritable securities?—There are, in my opinion, more in the district of Hawick and Jedburgh.

1714. There is nothing to prevent your buying property to any extent, and burthening it to the full value?—Nothing.

7715. Is it a common practice to buy property, without giving the price, but giving a bill?—Yes, it is common. I have done it to my own brother.

7716. Has it been done frequently?—Yes, to a considerable extent.

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7717. By both parties —Yes, I should think so. I have done it, and if the parties purchasing are not able to pay the price, I consider they must get it from the political agent.

7718. You have done it?—Yes, and shall do it again.

7719. Is there any secret made of it?—None.

7720. Are there any cases of property bought in large batches?—The first large purchase was that of Temple Hall. Mr. Spence and I were agents for Mr. Buchan, the proprietor of Temple Hall, and several years ago, previously to 1832, about 1824, we borrowed upon the property, for the proprietor, 2,700*l.* from a client of Mr. William Bell's, in Edinburgh, of the name of Miss Stuart. Mr. Buchan, previous to 1832, let the property to three tenants, of the name of Scott, at a rent of about 170*l.* or thereabouts. In October or November 1833 it was purchased by Mr. Horne, we understood, for political purposes; we were well aware that Mr. Horne had bought it, because Mr. Buchan told us so, our client; but at the time he told us, he did not know what was put upon it, and at the Registration Court in 1834, a claim was made by two people of the name of Henderson; their disposition was for a certain price, and was a special conveyance of a part of Temple Hall in their favour. I believe they paid the price. There was another disposition put in by Mr. Alexander Cunningham, of Carterhaugh, for a price which, I believe, he also paid. There was a third disposition put in by a person of the name of Francis Binnie, Bow-mill; it was a conveyance in his own favour. Then a joint conveyance was given in in the name of two Blackwoods, viz., Alexander Blackwood, bookseller, of Edinburgh; Robert Blackwood, bookseller, Edinburgh; William Forbes, advocate, Edinburgh; Archibald Horne, accountant, Edinburgh; William Keith, accountant, Edinburgh; Robert Scott Moncrieff, advocate, Dalkeith; Charles Neaves, advocate, Edinburgh; Robert Gavan Ogilvie, writer to the signet, Edinburgh; Daniel Smith, banker, Edinburgh; David Smith, writer to the signet, Edinburgh. There was another individual in the disposition, of the name of David Mills, advocate, but he did not claim that year.

7721. The two Hendersons, you state, claimed on one disposition?—Yes.

7722. Cunningham on another?—Yes.

7723. Binnie upon another?—Yes.

7724. And all the rest claiming upon a joint disposition?—Yes.

7725. Did the two Hendersons pay their price?—Yes.

7726. And Cunningham?—Yes.

7727. Do you believe that the others did not pay their price?—I really believe they did not; at least they did not pay the whole price. On searching the records the other day, I found that the 2,700 *l.*, the money which we borrowed previously for Mr. Buchan, the former proprietor, was taken up by Mr. James Curle, the conservative agent, in Melrose. After Mr. Curle obtains the conveyance, I find he is enfeoffed; then he grants a deed of restriction and renunciation, dated 3d of October 1834, restricting the security for that sum to the property conveyed to Mr. Binnie, and to the 11 others, the Blackwoods, Neaves and those I have named. By that deed Mr. Curle relieves the property conveyed to Mr. Cunningham, and to the two Hendersons, and allows it to remain a burthen upon the property conveyed to the others.

7728. When those claims were put in at the Registration Court, did you know that that restriction had taken place?—I did not know.

7729. Did it appear that the burthen extended over the whole?—There was no inquiry made into it. I was not aware of the fact till I searched the other day.

7730. And from those three persons being freed from the burthen, and it being laid upon the others, you draw the inference, that they did not pay the price?—Yes, they could not pay the price, or the property would not be burthened nearly up to the teeth, which it is.

7731. Mr. B. Baring.] I find among the joint owners who claim to vote in 1833 in the Melrose district, Robert Don, Gillan Ferguson and Allen Frier?—Yes.

7732. What are those persons?—Ferguson is a cousin of my own, and Frier is a clerk of my own.

7733. Had

7733. Had you any thing to do with that purchase?—We had been selling the property; it was burthened with a debt in favour of a person of the name of Cochrane, and the individual he lent it to had become a bankrupt. Cochrane was anxious to get up the money; we had advertised the property for months before that. Even before the Reform Bill passed the property in Galashiels was very much lowered in value, in consequence of the distress of the country, and we could not get an offer sufficient to pay off the heritable debt; and as Mr. Cochrane wanted the money, the property thus came into our hands, and we got those two parties to take it, partly with a view to get quit of the heritable debt, and not without some reference to the franchise; but we should not have bought the property except to get rid of the debt, not for the franchise only.

7734. When did this purchase take place?—In the month of January.

7735. Did they ever pay the money?—Yes, they paid the price.

7736. Have they received the rents?—There is an account kept in our books for them; I have not settled the account with my cousin since that time.

7737. Since 1833?—Yes; he had made out his account, but no settlement has taken place; he was anxious for an account; I told him I could not make it out, and I sent the books up to him.

7738. It was not worth while, it is so small?—He has a large property in Dumfries-shire, and in the account he made out, half the price is charged to him.

7739. Was this the first case of a purchase for political purposes in the district of Melrose?—The first purchase I made.

7740. Do you know of any other case previous to that, by the conservative party?—There was a person of the name of George Stewart got a conveyance from his grandfather, evidently for a political purpose.

7741. It was a disposition from his grandfather?—Yes.

7742. Who claimed at the same period?—He claimed as proprietor in 1833; we did not put the oath to him, and he was admitted; he took the oath at the election of 1834, that he was still proprietor; but this last year his grandfather died, and I heard that the grandfather had made a settlement without reference to this conveyance, to his wife in life-rent, and to the ground-owner in fee; I therefore objected to him, and referred the objection to his oath; and when he was summoned, he told the officer he would not attend; the sheriff allowed the case to lie over till the very last hour of the court, and as he did not appear, according to the summons, he was struck off the roll.

7743. *Chairman.*] Can you state in 1834 he took an oath that he was proprietor?—Yes; I searched the records the other day, and I found that the grandfather, George Stewart, borrowed from the conservative agent at Melrose 100 *l.* on the 1st January 1836; and it does not appear to me that the grandson joined in that bond; it appeared to be over the whole property.

7744. Who is in possession of the property at present?—There is an enfeoffment on record proceeding on the father's settlement, dated 5th December 1835, in favour of his wife in life-rent.

7745. Who is in possession at present?—The grandson is in possession, as tenant to the mother, as the life-renter; the daughter came to me to ascertain what stipend was due for the whole.

7746. You say you understood he is tenant; have you any reason to know it?—From the seisin which appears upon the record, the settlement conveys the whole property, a part of which was conveyed to the grandson, to the wife in life-rent, and then to the daughter, and the fee to the grandson; there are two life-renters, and the fee is immediately given out to the son; but the son cannot inroll as fiar during the life of the life-renter.

7747. Is he inrolled?—No.

7748. What makes you say he occupies the premises as tenant?—Because the settlement gives a life-rent to the grandmother, and he can never come into the possession, except as tenant, till her death; the fee and the life-rent exist at the same moment. There was another one made by the other party in 1833; a person of the name of Mercer was inrolled in 1833, on a property in Darnick, which I afterwards bought to disfranchise one of Lord John Scott's voters; the deed from the father to the son was dated in January 1833.

7749. *Mr. B. Baring.*] I find in the year 1834, Andrew Murray; is he a resident in the county?—He is an advocate at Edinburgh; his father is proprietor of the estate of Replaw; and the father, in January 1834, granted a gratuitous conveyance of a field of the estate to his son.

7750. Is he a resident?—No, he is not.

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7751. Is

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21 March 1837.

Mr.
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7751. Is he connected with the liberal party?—He is counsel for the liberal party.
7752. Do you consider the case of Mr. Murray a fair transaction?—He would not take it if he was not proprietor; he is rather squeamish upon those points
7753. The case of Newbiggin?—That was a transaction I managed myself; the price was paid upon the sale.
7754. Is he connected with the liberal party?—He is agent for Mr. Curry, of Lint Hill, a gentleman in Roxburgh.
7755. *Chairman.*] What is Mr. Newbiggin?—He is writer to the signet in Edinburgh.
7756. Mr. B. Baring.] Is he not a political agent?—I believe he is, I am not certain; I have not been in the country for five or six weeks; I know he expected to be agent.
7757. *Lord Advocate.*] He was not at that time?—He assisted Mr. Wilson, in 1835, but not as an agent.
7758. Mr. B. Baring.] I find some joint purchases; Adam Patterson, Robert Dobson, and James Forrest, in 1835; is Mr. Patterson a political agent?—Yes, in Selkirkshire.
7759. Are they at all connected together, as they have made this joint purchase?—No, except their being acquainted; I know of no connexion in business between them otherwise.
7760. Does Mr. Forrest vote in Selkirkshire?—Yes, I believe he does; I have seen him attend meetings there as a voter.
7761. Do you know upon what right he claims to vote?—I think he is upon the old roll, if I am not mistaken.
7762. Did you make this purchase?—No.
7763. You know nothing about it?—No, nothing at all.
7764. I find George and John Drummond in 1835?—Yes.
7765. By what title did they claim to vote?—As joint life-renters, by a gratuitous deed from their father.
7766. Do you know where they are now?—In Sheerness.
7767. In what situation?—Blacksmiths.
7768. Employed in the Government works?—Yes.
7769. Do you know when they obtained that situation?—They obtained it previously to the grant; I corresponded with them at Sheerness at the time the father granted them the deed.
7770. I find in the next year, in Melrose, Alexander Elliot; do you know in what right he claims to vote?—He claims, as joint proprietor, along with James Scott Stewart, of Langlee.
7771. Had you any thing to do with the purchase of the property?—It was a conveyance by his brother of the same property in St. Boswell's, upon which his brother was previously inrolled, and upon which we borrowed 500*l.*, which was borrowed of a Mr. Brodie, a private client of Spencer and Thomson.
7772. Is it burthened?—Yes, to the full extent; I consider 500*l.* the value.
7773. It was made for political purposes?—Yes, it was made previously, between Alexander Elliot and Russell Elliot. Alexander Elliot conveyed along with Russell to two other individuals, expecting to be inrolled upon another property, which he was not, and then got this re-conveyed to him.
7774. I find James Veir, who claims as owner of property; do you know any thing of that claim?—By his father's settlement; we were agents for his father, and we made the settlement which conveyed the whole property to his wife in life-rent, and to the son in fee; after the father's death, the mother granted a renunciation of the whole of the life-rent to the son, on condition he was to grant her an obligation to pay her an annuity of 15*l.* a year during her life, which was nearly the value of the property.
7775. Have you any doubt it was done to confer a vote upon the party?—None whatever; it was done for that purpose.
7776. I find amongst those who claim as joint tenants, in Jedburgh, in 1834, three Turnbells?—Four claimed, but one was rejected on account of misnomer.
7777. Whose tenants are they?—Sir William Scott, of Ancrum.
7778. Did they claim upon a new lease?—There was a previous lease to two of them; I understood a missive of lease; and previous to 1834, I prepared a regular lease, by Sir William, in favour of the four brothers.
7779. It was done for the sake of giving votes?—No, they were joint tenants before; but the farm was let to two brothers, and their capital was insufficient, and each assumed one of the other brothers; they had divided the farm, and had the

the possession of it, without the consent of Sir William Scott, for a number of years; and Sir William agreed to put them all into a regular lease, and I prepared the lease, including the whole four names; but at the Registration Court they stated they had been joint tenants for years, the whole four brothers, and upon that declaration I did not conceive the lease was made for the franchise, but to improve their interest.

7780. Do you know which of the four took a part in the management of the farm?—They all reside upon it, and are engaged in the labour.

7781. Were the two brothers who were received men of property?—I suppose they were not, but I do not know their circumstances; but all the brothers assisted in the management of the farm.

7782. I find three brothers of the same name, tenants to the Earl of Minto, claiming the same year?—Yes, there were, in 1834, for the farm of Kaimes, if I recollect right.

7783. Are they all resident?—I cannot speak positively to that.

7784. Did they claim to vote under a new lease?—It was an original lease to the Turnbells, if I recollect right; they entered at Whitsunday 1833, but I am not positive of it; it was the farm of Kaimes.

7785. Who voted in right of the farm before, do you know?—No, I do not; William Reid, it was.

7786. There was a sole tenant before?—Yes.

7787. Then, he left, and the three brothers were inrolled?—Yes, the Turnbells; but I am speaking from memory; I have no notes with me.

7788. I find the Rev. John Ewen voting, on his appointment to be minister of Hobkirk?—Yes.

7789. Do you know on whose presentation that was?—I suppose it was the Crown's presentation.

7790. There was great talk of it in the country?—Yes, there was.

7791. What was it raised so much discussion?—It was the political feeling that existed in the county at the time; I believe it originated partly from Sir William Elliott, of Stobbs, who wished to have the presentation himself; it was understood he had applied to Government to present himself, which was refused, and he raised a great outcry and got up petitions.

7792. Was not there some resistance on the part of the parishioners?—It was by Sir William Elliott and the conservative party; I never heard any objection to the young man; he is a very nice young man, and very well liked.

7793. *Lord Advocate.*] Has he given satisfaction to the parish?—I believe so.

7794. *Mr. B. Baring.*] Whom was the feeling directed against; against the father?—No; against the liberal party.

7795. Is not the father a strong partisan?—I do not say he is a strong partisan, but he is a partisan.

7796. Does he vote in Roxburghshire?—Yes.

7797. And in Selkirkshire?—I do not know whether he does there.

7798. Has not the father a son qualified in Roxburghshire?—I am not aware of that.

7799. Is he not qualified by Mr. Pringle, of Clifton?—I cannot speak to that.

7800. *Lord Advocate.*] Who was the other person brought forward?—I forget the person's name now.

7801. *Mr. B. Baring.*] I find, in 1835, on the farm of Wooden, two persons claim to vote as joint tenants?—Yes.

7802. Were they new tenants?—The farm belonged to the Duke of Buccleuch.

7803. It belonged to Lord Minto?—Is Parkes the name?

7804. No, Young?—I know nothing of that; I know the case of Parkes.

7805. On your side, you have a practice of creating life-renters; it is not confined to the conservative side?—Principally it is.

7806. You have cases on your side?—Yes, a few cases; not many.

7807. Limited?—Limited in point of numbers.

7808. *Lord Advocate.*] How comes there to be fewer on your side than on the other?—Most of these life-rents by us are created by fathers to sons; we have few purchases of life-rents in our district.

7809. *Chairman.*] How does that appear, when you said you were making votes as fast as you could?—Yes; but the gentlemen in our district do not like it; almost all our life-rents are by fathers to sons; I only see two by grant, a person of the name of William Wood and Thomas Mabon.

7810. *Lord Advocate.*] When were they created?—In 1835, from father to son.

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7811. When

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7811. When were those two you have mentioned?—Wood in 1835, Mabon in 1836, by grant.

7812. Mr. B. Baring.] Have you any knowledge whatever of the claim of George Rutherford, in 1834, in Jedburgh, writer in Edinburgh?—Yes, that was a purchase made from his brother, William Rutherford, the whig agent, in Jedburgh.

7813. Had you any thing to do with that transaction?—I have heard the brother speak of it; I had nothing to do with it.

7814. Do you know any thing of the burthens upon it?—I believe the price is a burthen upon it.

7815. The elector has no interest whatever in the property itself, in right of which he claims?—Yes; he is the proprietor under the burthen.

7816. It is burthened to the full value?—Yes; but if there is any additional rent over the interest, he is entitled to that.

7817. There is no additional rent?—There ought to be; it is an old property, and the rent ought to be considerably higher than the interest paid.

7818. I find, in 1836, a joint tenant in Jedburgh, Thomas Oliver?—I cannot speak to that name; there are isolated cases in the whole county; I can speak to only——

7819. Chairman.] In what district of the county do joint tenancies principally abound?—Principally in Hawick and Jedburgh.

7820. Do you know much of those districts?—Not much.

7821. Do you know any thing of Hawick district?—I know it belongs principally to the Duke of Buccleuch and his tenants.

7822. Are the cases there very common of tenants being assumed in leases?—I cannot speak positively to that.

7823. Who is agent in that district?—James Hilson.

7824. Are you in the habit of going over his list?—Yes; and from it there appears to be a great number.

7825. Do you act in concert with him over the county?—Yes.

7826. Of your own knowledge you cannot speak to that?—No, except as to these lists; there are a number of joint tenancies in these lists.

7827. Has the roll of the county increased since 1832, in consequence of the modes of acquiring votes for political purposes?—I think in the Registry Court of 1832, almost every individual was inrolled that was entitled.

7828. Has the roll increased since that time?—Yes.

7829. Have you a table of the constituency in 1836?—Yes, I have.

7830. Have you got one of the state of the constituency in 1832?—Yes.

7831. Are they divided out into proprietors and life-renters, tenants, &c.?—Yes.

7832. Do your tables extend to the whole county?—Yes; I cannot speak so positively to any district except Melrose, but I have tried to ascertain the accuracy of the other list.

7833. Have you gone over the lists with the other agents?—No; I have gone over the lists with the table here, and they appear to be correct.

7834. Have you been in the habit of going over the lists?—Yes; some of the lists do not take in the old constituency of 1832, but only the constituency of 1836; I have added a note to that effect.

7835. Mr. B. Baring.] You have spoken more particularly to Melrose?—Yes; and I have endeavoured to ascertain the accuracy of the others with the printed register of the whole county.

7836. With respect to that particular part of the county to which you have spoken of your own knowledge, can you give an abstract for the four years?—Yes.

7837. Chairman.] Can you also give a table of the joint tenants?—Yes, I can of those who claimed from 1832 to 1836.

7838. Can you give us a list of those who were inrolled?—Yes.

7839. Are the tables in all the districts made upon the same principle as they are in your own?—Not altogether; but I have put a note at the bottom where they differ.

7840. Have you corrected them where they differ?—I could not do that; I have not the constituency of 1832.

7841. Could you make that correction?—Yes, when I get to Scotland I could revise them by the registration book.

7842. Could you give the correction, where you differ from the other agents?—Yes, at Melrose, and I could send it up.

[The Witness delivered in the following Papers:]

LIST

Mr.
R. G. Thompson.

21 March 1837.

(A.)

LIST of JOINT and SINGLE LIFE-RENTS who claimed to be inrolled in the District of Melrose and County of Roxburgh, consisting of the following Parishes: *Melrose, Maxton, Lilliesleaf, Galashiels, Bowden, St. Boswell's* and *Selkirk*, with the Names and Places of Residence of the Grantors and Holders, and the Nature of the Right.

Whigs.	Tories.	CLAIMANTS.	Nature of Right.	GRANTORS.	Non-Resident.	Resident.
		1832:				
	1	Rev. Thomas Jolly, Bowden	Office -	Roxburgh -	-	1
	1	J. Scott, schoolmaster, Bowden	ditto -	Heritors -	-	1
	1	James Tillee, Midlan -	Marriage -	-	-	1
	1	Rev. Nath. Paterson, Galashiels	Office -	Scott, of Gala -	-	1
	1	Rev. D. Baxter, Lilliesleaf -	ditto -	Roxburgh -	-	1
	1	Rev. J. Thomson, Maxton -	ditto -	-	-	1
	1	James Amos, Melrose -	Marriage -	-	-	1
	1	Robert Fyeh, Galashiels -	Purchase -	-	1	-
	1	Adam Purdie, Galashiels -	Marriage -	-	1	-
	1	Alex. Stevenson, Langholm	ditto -	-	1	-
	1	Thomas Smail, Portobello -	ditto -	-	1	-
	1	Rev. Peter Craw, St. Boswell's	Office -	Buccleuch -	-	1
	1	George Dunlop, butcher, Leard	Marriage -	-	1	-
	1	Rev. P. Bradley, Lilliesleaf -	Office -	Congregation -	-	1
1	-	George Scott, schoolmaster, Lilliesleaf.	ditto -	Heritors -	-	1
1	-	William Rimers, Galashiels -	Marriage -	-	-	1
1	-	James Burnet, Galaside -	ditto -	-	-	1
1	-	Andrew Bell, Edinburgh -	ditto -	-	1	-
1	-	George Easton, Melrose -	ditto -	-	-	1
1	-	Robert Heiton, Darnick -	ditto -	-	-	1
1	-	Rev. G. Lawson, Kilmarnock	ditto -	-	1	-
1	-	Rev. W. Rutherford, Newtown	Office -	Congregation -	-	1
1	-	Rev. G. Thompson, Melrose	ditto -	Buccleuch -	-	1
1	-	Rev. T. Williamson, Melrose	ditto -	Congregation -	-	1
1	-	James Dickson, schoolmaster, St. Boswell's.	ditto -	Heritors -	-	1
1	-	Robert Handyside, schoolmaster, Maxton.	ditto -	ditto -	-	1
1	-	Adam Simpson, Lessudden -	Purchase -	-	-	1
1	-	George Euston, Melrose -	Marriage -	-	-	1
	1	Thomas Smail, Portobello -	ditto -	-	1	-
14	15				8	21
		1833:				
1	-	John Johnston, Gattonside -	Marriage -	-	-	1
1	-	Robert Heir, Galashiels -	ditto -	-	-	1
2	-	Note.—There were no joint life-rents in 1833.			-	2
		1834:				
	1	John G. Lockhart, London -	Grant -	Sir. W. Scott -	1	-
	1	Isaac Bayley, Edinburgh -	ditto -	ditto -	1	-
	1	J. W. Arnott, P. S., Edinburgh	ditto -	ditto -	1	-
	1	George Lyan, Lindons, Kawan	ditto -	ditto -	1	-
	1	Charles Scott, London -	ditto -	ditto -	1	-
	1	John Stewart Lyson, of Kirk-michael.	ditto -	ditto -	1	-
	1	Francis Hance, advocate, Edinburgh.	ditto -	J. Hance, his father	1	-
	1	William Hance, Edinburgh -	ditto -	ditto -	1	-
	1	John Hance, Edinburgh -	ditto -	ditto -	1	-
	1	James Hance, London -	ditto -	ditto -	1	-
	1	George Mercer, green	ditto -	J. Mercer, his father	-	1
	1	James Mercer, jun. ditto -	ditto -	ditto -	-	1
	1	William Barton, Perth -	ditto -	T. & R. Barton -	1	-
	1	James Levison, Melrose -	ditto -	ditto -	-	1
1	-	Robert Henderson, Lilliesleaf	Marriage -	-	-	1
1	-	George Easton, Melrose -	ditto -	-	-	1
1	-	George Leitch, Berryhall -	ditto -	-	-	1
1	-	Thomas Murray, schoolmaster, Melrose.	Office -	Heritors -	-	1
	1	Thomas Smail, Portobello -	Marriage -	-	1	-
	1	John Turnbull, Branzholm -	ditto -	-	-	1
1	-	Robert Heir, Galashiels -	ditto -	-	-	1
	1	A. Scott, younger, of Raeburn	Grant -	W. Scott, his father	1	-
	1	Archibald Tod, Liverpool -	ditto -	T. Tod, his brother	1	-
5	18				14	9

Mr.
R. G. Thompson.

21 March 1837.

(A.)—LIST OF JOINT AND SINGLE LIFE-RENTS who claimed to be inrolled—*continued*.

Whigs.	Tories.	CLAIMANTS.	Nature of Right.	GRANTORS.	Non-Resident.	Resident.
		1835 :				
	1	James Rose, W. S. Edinburgh	Grant	Mr. Horne - -	1	-
	1	William Horne, advocate, Edinburgh.	ditto	ditto - -	1	-
	1	James Moncrieff Melville, W. S., Edinburgh.	ditto	ditto - -	1	-
	1	John Ballantyne, Dalkeith -	-	- -	1	-
	1	William Ballantyne, ditto -	ditto	- -	1	-
1	-	James Redford, Hermieston	ditto	J. Redford, his father	-	1
1	-	John Redford - -	ditto	ditto - -	-	1
	1	William Trotter, Newcastle -	ditto	To their trustees -	1	-
	1	George Harford, Chesterling	ditto	J. Harford, his father	-	1
	1	Francis Harford - -	ditto	ditto - -	-	1
1	-	Hugh Morton, Leith - -	ditto	Hugh Morton - -	1	-
1	-	Charles Morton, W. S., Edinburgh.	ditto	ditto - -	1	-
1	-	John Drummond, Sheerness	ditto	A. Drummond, his father	1	-
1	-	George Drummond, ditto -	ditto	ditto - -	1	-
1	-	James Borthwick, Newtown	Marriage	- -	-	1
1	-	James Dickson, schoolmaster, Lessudden.	Office	Heritors - -	-	1
	1	George Pott Erskine, ensign 72d regt.	Grant	James Erskine, his brother.	1	-
	1	J. Gibson, W. S., Edinburgh	ditto	A. Gibson, his father	1	-
	1	Rev. G. Ritchie, St. Boswell's	Office	Buccleuch - -	-	1
1	-	William Noad, Galashiels -	Grant	Thomas Davidson -	1	-
9	11				13	7
		1836 :				
	1	G. P. Gordon, Preston Pans	ditto	G. Gordon, his father	1	-
	1	Robert Gordon, ditto - -	ditto	ditto - -	1	-
	1	J. Inglis, advocate, Edinburgh	ditto	Horne and Rose -	1	-
	1	George Thompson, advocate, Edinburgh.	ditto	ditto - -	1	-
	1	James H. Davidson, W. S., Edinburgh.	ditto	ditto - -	1	-
	1	John M'Kenzie, accountant, Edinburgh.	ditto	ditto - -	1	-
	1	George Hobson Bainbridge, India.	ditto	G. Bainbridge, his father	1	-
	1	Henry Bainbridge, R.N. -	ditto	ditto - -	1	-
	1	Charles Bainbridge, Liverpool	ditto	ditto - -	1	-
	1	Richard Burtchell, England	ditto	G. C. Bainbridge -	1	-
	1	John H. Colt, Galaside -	ditto	ditto - -	-	1
	1	Alexander Allan, advocate, Edinburgh.	ditto	Mark Sprott, Riddle	1	-
	1	James Amos - -	Marriage	- -	-	1
	1	Adam Given, Berwickshire -	Grant	F. Halliday, a relation	1	-
1	-	Thomas Mabon, Edinburgh -	ditto	Thomas Scott -	1	-
1	-	John Matthieson, Gattonside	Reserved	- -	-	1
1	-	Thomas Stoddart, Selkirk -	Marriage	- -	1	-
	1	William S. Walker, of Bowland.	Grant	Thomas Tod, of Drygrange.	1	-
3	15				15	3

TOTAL of JOINT and SINGLE LIFE RENTS.

	Whig.	Tory.	Non-Resident.	Resident.	TOTAL
Year 1832	14	15	8	21	58
" 1833	2	-	-	2	2
" 1834	5	18	14	9	46
" 1835	9	11	13	7	40
" 1836	3	15	15	5	38
	33	59	50	42	184

LIST

Mr.
R. G. Thompson.

(B.)

LIST of JOINT TENANTS who claim to be inrolled in the District of Melrose and County of Roxburgh, consisting of the following Parishes: *Melrose, Maxton, Lilliesleaf, Galashiels, Bowden, Saint Boswell's and Selkirk.*

21 March 1837.

Whigs.	Tories.	CLAIMANTS.	PROPRIETORS of ESTATE.	Original.	Before 1832.	Assignment or Transfer.	Before 1832.	Non- Resident.	Resident.
		1832 :							
	1	John Grieve, Eastfield -	Mr. Scott, Darnlaw	1	1	-	-	-	1
	1	Walter Thomson, Whitlaw	Mr. Curle -	1	1	-	-	-	1
	1	John Thomson, ditto -	ditto -	1	1	-	-	-	1
	1	Robert Dryden, Firth -	M. Horsburgh	1	1	-	-	-	1
	1	Walter Thomson, Millfield	Lord Polwarth	1	1	-	-	-	1
	1	John Thomson, Maxton -	ditto -	1	1	-	-	1	-
	1	Andrew Thomson, Millfield	ditto -	1	1	-	-	-	1
	1	Thomas Dods -	Mr. Baillie	1	1	-	-	1	-
	1	James Dods, ditto -	ditto -	1	1	-	-	-	1
	1	George Mercer, Coat Green	Sir W. Scott	1	1	-	-	-	1
	1	John Murray, Buckholm -	Mr. Pringle, of Torwoodlee.	1	1	-	-	-	1
	1	Robert Murray, Buckholm	Mr. Pringle, of Torwoodlee.	1	1	-	-	-	1
1	-	Walter Dryden, Firth -	Mr. Horsburgh -	1	1	-	-	-	1
1	-	Mr. Grieve, senior, Lilliesleaf	Mr. Redford, &c.	1	1	-	-	-	1
1	-	Major-General David Walker, Riddleton-hill.	Roxburgh	1	1	-	-	-	1
4	12			16	16	-	-	2	14
		1833 :							
1	-	Robert Readman, Bowdenhall	Kerr, of Kippilaw	1	1	-	-	-	1
1	-	William Readman -	ditto -	1	1	-	-	-	1
1	-	Andrew Scott, Templehall -	Andrew Buchan -	1	1	-	-	-	1
1	-	George Scott, ditto -	ditto -	1	1	-	-	-	1
1	-	James Scott -	ditto -	1	1	-	-	-	1
1	1	John Renwick -	Miss Innes	1	1	-	-	-	1
5	1			6	6	-	-	-	6
		1834 :							
	1	Adam Gourly, Lilliesleaf -	Mr. Currie, of Linthill.	1	1	-	-	-	1
	1	James Gourly, ditto -	ditto -	1	1	-	-	-	1
	2			2	2	-	-	-	2
		1835 :							
1	-	Russell Elliot, R. W. Langlee	Lord Somerville -	1	after	-	-	-	1
1	-	George Augustus Elliot, R. N.	ditto -	1	after	-	-	1	-
1	-	Gilbert Elliot, Greenwells -	ditto -	1	after	-	-	-	1
1	1	George Fairbairn, Broomlees	Sir W. Scott	1	after	-	-	-	1
1	1	Robert Fairbairn, Melrose -	ditto -	1	after	-	-	-	1
1	1	James Mercer, senior, Shoeside	ditto -	1	after	-	-	-	1
1	1	James Mercer, junior, ditto	ditto -	1	after	-	-	-	1
1	1	George Mercer, ditto	ditto -	1	after	-	-	-	1
3	5			8	-	-	-	1	7
		1836 :							
1	-	Adam Oliver, tenant, Chapel	Mr. Currie, of Linthill.	1	after	-	-	-	1
1	-	Andrew Oliver, ditto	ditto -	-	-	1	after	-	1
1	-	Thomas Oliver, ditto	ditto -	-	-	1	after	-	1
1	-	Robert Preston, Middles	Mark Sprott, of Riddle.	1	after	-	-	-	1
1	-	John Preston, ditto	ditto -	1	after	-	-	-	1
5	-			3	after	2	-	-	5

TABLE of JOINT TENANTS.

Years of Enrolment.	Whig.	Tory.	Original.	Before 1832.	After 1832.	Assignment or Transfer.	Before 1832.	After 1832.	Non- Resident.	Resident.	TOTAL.
1832	4	12	16	16	-	-	-	-	2	14	16
1833	5	1	6	6	-	-	-	-	-	6	6
1834	-	2	2	2	-	-	-	-	-	2	2
1835	3	5	8	-	8	-	-	-	2	7	8
1836	5	-	3	-	3	2	-	2	-	5	5
TOTAL	17	20	35	24	11	2	-	2	3	34	37

Mr.
R. G. Thompson.

21 March 1837.

(C.)

LIST of JOINT PROPRIETORS who claimed to be inrolled as Electors in the District of Melrose, and County of Roxburgh, consisting of the following Parishes: *Melrose, Maxton, Lilliesleaf, Galashiels, Bowden, Saint Boswells and Selkirk.*

Non-Resident.	Resident.	CLAIMANTS.	Purchase	Succession.	Whigs.	Tories.
		1832 :				
1	-	William Murray, residing at Dud- dington, near Queensferry.	-	1	-	1
	1	James Murray, Midlimburn -	-	1	-	1
	1	Robert Boston, farmer, Langstone -	1	-	-	1
	1	Thomas Boston, slater, Galaside -	1	-	-	1
1	-	George Bainbridge, Liverpool -	1	-	-	1
	1	George Cole Bainbridge, Galaside- house.	1	-	-	1
	1	Thomas Simpson, Blainslie -	-	1	-	1
	1	Charles Simpson, Blainslie -	-	1	-	1
1	-	John Dunlop, of Whitmuirhall, re- siding at	-	1	-	1
	1	Thomas Little, Blainslie (supposed)	-	1	1	-
	1	Andrew Little -	-	1	1	-
	1	Robert Haldane, Galashiels -	1	-	1	-
1	-	John Lees, Edinburgh -	1	-	1	-
1	-	Thomas Lees, Musselburgh -	1	-	-	1
5	9		7	7	4	10
		1833 :				
	1	George Stewart, jun., Galaside -	1	-	-	1
	1	George Stewart, three times, ditto -	1	-	-	1
	1	R. D. G. Ferguson, of Isle -	1	-	1	-
	1	Allan Freer, Dingleton -	1	-	1	-
	1	Robert Inglis, Galashiels -	1	-	1	-
	1	John Inglis, ditto -	1	-	1	-
	6		6	-	4	2
		1834 :				
1	-	Alexander Blackwood, Edinburgh -	1	-	-	1
1	-	Robert Blackwood, ditto -	1	-	-	1
1	-	William Tookes, Edinburgh -	1	-	-	1
1	-	Charles Neaves, Edinburgh -	1	-	-	1
1	-	Robert Scott Moncrieff, advocate, Dalkeith.	1	-	-	1
1	-	Robert Gavin Ogilvie, W. S., Edin- burgh.	1	-	-	1
1	-	David Smith, W. S., Edinburgh -	1	-	-	1
1	-	Donald Smith, banker, Edinburgh -	1	-	-	1
1	-	Archibald Horne, accountant, Edin- burgh.	1	-	-	1
1	-	William Keith, accountant, Edin- burgh.	1	-	-	1
1	-	Francis Binnie, Bow-mill -	1	-	-	1
1	-	Alexander Cunningham, Carter- haugh.	1	-	-	1
1	-	George Henderson, Handlywood -	1	-	-	1
1	-	Thomas Henderson, Boon -	1	-	-	1
1	-	George Simpson, Lauder -	1	-	-	1
1	-	James Dunlop, Whiterighill -	1	-	-	1
	1	Thomas Muir, Lessudden -	1	-	-	1
	1	John Wallace, Bowden -	1	-	1	-
	1	William Wood, Barkholmside -	1	-	1	-
	1	Joshua Wood, ditto -	1	-	1	-
	1	James Burns, Lilliesleaf -	1	-	1	-
	1	— Stover, ditto -	1	-	1	-
	1	John Turnbull, mason, ditto -	1	-	1	-
	1	Hugh Dobson Mant, Galashiels -	1	-	1	-
	1	Adam Turnbull, Jedburgh -	1	-	1	-
1	-	Andrew Dow, Langholm -	1	-	-	1
17	9	Carried forward -	26	-	8	18

(C.)—LIST OF JOINT PROPRIETORS who claimed to be inrolled as Electors—*continued*.Mr.
R. G. Thompson.

21 March 1837.

Non-Resident.	Resident.	CLAIMANTS.	Purchase.	Succession.	Whigs.	Tories.
17	9	1834: Brought forward -	26	-	8	18
1	-	Thomas Freer - - - -	1	-	-	1
	1	Andrew Dunn, Melrose - - -	1	-	1	-
	1	Andrew Murdie, ditto - - -	1	-	1	-
	1	William Freer, Galashiels - -	1	-	1	-
	1	William James Frazer, Allesly -	1	-	-	1
	1	William Hastie, Melrose - -	1	-	-	1
1	-	John Romanes, Lauder - - -	1	-	-	1
1	-	Peter Rodger, Selkirk - - -	1	-	-	1
	1	James Mark, ditto - - - -	1	-	-	1
	1	George Mark, Melrose Toll-bar -	1	-	-	1
1	-	James Mein, Nairne - - - -	1	-	1	-
	1	John Mein, Hoxley - - - -	1	-	1	-
1	-	Peter Mein, Glasgow - - - -	1	-	1	-
1	-	William Mein, Alnwick - - -	1	-	1	-
	1	Andrew Mein, Hoxley - - -	1	-	1	-
1	-	Alexander Brodie, Colston Mains -	1	-	1	-
1	-	John Brodie, Haddington - -	1	-	1	-
1	-	William Brodie, Upper Leith -	1	-	1	-
1	-	John Spence, Earlsden - - -	1	-	1	-
1	-	Donald Horne, W. S., Edinburgh -	1	-	-	1
1	-	James S. Rose, ditto - - - -	1	-	-	1
	1	John Selkirk, Jedburgh - - -	1	-	1	-
	1	Thomas Night, ditto - - - -	1	-	1	-
1	-	Alexander Elliott, London - -	1	-	1	-
	1	Russell Elliot, Chieftwood - -	1	-	1	-
	1	William Young, Lilliesleaf - -	1	-	1	-
	1	Andrew Cochrane, ditto - - -	1	-	1	-
	1	James Thorburn, merchant, Jedburgh.	1	-	1	-
	1	John Taylor, ditto - - - -	1	-	1	-
1	-	John Hartely, Whitehaven - -	1	-	1	-
1	-	Guildford Hartely, Rosehill -	1	-	1	-
1	-	Milham Hartely, ditto - - -	1	-	1	-
1	-	Rev. Hilton Wyberg, Joel - -	1	-	1	-
1	-	James Wyberg, Joel-hall - - -	1	-	1	-
1	-	Peter Wyberg, Joel Grange - -	1	-	1	-
1	-	William Hartely, Joel-hall - -	1	-	1	-
	1	George Thomson, Melrose - - -	1	-	1	-
	1	Robert G. Thomson, ditto - -	1	-	1	-
37	27		64	-	37	27
		1835:				
1	-	Thomas Kerr, Craighouse - - -	1	-	-	1
1	-	William Forbes, of Callender, M.P.	1	-	-	1
1	-	Donald Horne, W. S., Edinburgh -	1	-	-	1
1	-	Sir William Jardine, of Applegarth.	1	-	1	1
	1	James Scott, Langlee - - - -	1	-	-	1
1	-	Archibald Swinton, advocate, Edinburgh.	1	-	-	1
1	-	Thomas Trotter, W. S., ditto -	1	-	-	1
1	-	Benjamin R. Bell, advocate, ditto -	1	-	1	-
1	-	John Black Gracie, W. S., ditto -	1	-	1	-
1	-	Andrew Miller, ditto - - - -	1	-	1	-
1	-	John Rutherford, W. S., ditto -	1	-	1	-
1	-	Benjamin Bell, W. S., ditto - -	1	-	1	-
1	-	William Gardiner, ditto - - -	1	-	1	-
1	-	David Drysdale, Glasgow - - -	1	-	1	-
1	-	James Henderson, Edinburgh - -	1	-	1	-
1	-	Andrew S. Ogle, Glasgow - - -	1	-	1	-
1	-	George Scott, Edinburgh - - -	1	-	1	-
1	-	James Blackwood, ditto - - -	1	-	-	1
	1	William Cossford, Bowden - - -	1	-	1	-
	1	James Davidson - - - - -	1	-	1	-
	1	John Jamieson, Bowden - - -	1	-	1	-
	1	Robert Thomson, ditto - - -	1	-	1	-
	1	John Thomson, ditto - - - -	1	-	1	-
	1	William Marshall, Cuddy-hall - -	1	-	1	-
	1	Adam Stewart, Gattonside - - -	1	-	1	-
17	8	Carried forward -	25	-	18	7

Mr.
R. G. Thompson.

24 March 1837.

(C.)—LIST OF JOINT PROPRIETORS who claimed to be inrolled as Electors—*continued*.

Non-Resident.	Resident.	CLAIMANTS.	Purchase.	Succession.	Whigs.	Tories.
17	8	1835: Brought forward -	25	-	18	7
	1	William Frederick, Dearwick -	1	-	1	-
	1	Thomas Walker - ditto -	1	-	1	-
	1	Thomas Walker, Galashiels -	1	-	1	-
	1	James Wallace, Melrose -	1	-	1	-
	1	John Mathieson, Gattonside -	1	-	1	-
	1	Thomas Currie, Gattonside -	1	-	1	-
1	-	Robert Dobson, Edinburgh -	1	-	1	-
1	-	James Forrest, of Conneston -	1	-	1	-
1	-	Adam Paterson, W. S., Edinburgh -	1	-	1	-
	1	George Easton, Melrose -	1	-	1	-
	1	Robert Easton - ditto -	1	-	1	-
1	-	Andrew Grieve, W. S., Edinburgh -	1	-	1	-
	1	Thomas Cochrane, Edinburgh -	-	1	1	-
	1	Thomas Davidson, Galashiels -	-	1	-	1
1	-	James Miller, Liverpool -	-	1	-	1
22	18		37	3	31	9
		1836:				
	1	Andrew Heslop, Galashiels -	1	-	1	-
	1	William Heslop - ditto -	1	-	1	-
	1	George Roberts - ditto -	1	-	1	-
	1	George Storey, Bougate -	1	-	1	-
	1	Archibald Douglas, Hermieston -	1	-	1	-
	1	Andrew Redford, Trinalee -	1	-	1	-
-	6		7	-	7	-

TABLE of LAND PROPRIETORS.

	Purchase.	Succession.	Whig.	Tory.	Non-Resident.	Resident.
Year 1832 -	7	7	4	10	5	9
1833 -	6	-	4	2	-	6
1834 -	64	-	37	27	37	27
1835 -	37	3	31	9	22	18
1836 -	7	-	7	-	-	7
TOTAL -	121	10	83	48	64	67

JOINT

Mr.
R. G. Thompson.

21 March 1837.

(D.)

JOINT QUALIFICATIONS, Roxburghshire.—HAWICK DISTRICT, 1836.

No. of Voter.	NAMES OF VOTERS.	Species of Property.	How acquired.
JOINT PROPRIETORS, 1836:			
2	{ Alexander Borthwick, farmer, Newmill - - - - Robert Hardie, farmer, Sorbie - - - - }	House -	By purchase.
2	{ John Peter Boclean, esquire, London - - - - Reverend Gilbert Elliot, Temple Sowerbry - - - - }	House -	ditto.
2	{ John Brown, gardener, Holmhead - - - - Thomas Chalmar Borthwick, Hoperig - - - - }	House -	ditto.
2	{ William Smith, blacksmith, Hawick - - - - James Smith - ditto - ditto - - - - }	House -	-- Purchase and erection.
1	{ Francis Stevenson, farmer, Sunderland - - - - John Mark Skinner, Selkirk, 1834 - - - - James Grieve, farmer, Howden, 1835 - - - - }	House -	By purchase.
2	{ John Turnbull, joiner, Hawick - - - - John Turnbull, junior, ditto - - - - }	House -	ditto.
1	{ George Wilson, manufacturer, Hawick - - - - John Wilson - - ditto - ditto, 1835 - - - - Walter Wilson - ditto - ditto, 1835 - - - - }	Spinning-mill	Succession.
2	{ George Watson, shopman, Dewsbury - - - - James Watson, draper, North Shields - - - - }	House -	Purchase
14	TOTAL.		
JOINT TENANTS, 1836:			
1	{ Thomas Amos, farmer, Earlside - - - - Peter Amos - ditto - ditto, 1835 - - - - }	Lands -	-- James Dou- of Cavers.
1	{ Hugh Armstrong, Demainholm - - - - Joseph Armstrong - ditto, 1833 - - - - }	Lands -	-- Heirs of Da- vid Ballan- tyne.
2	TOTAL.		
JOINT LIFE-RENTERS, 1836:			
3	{ Walter Adam, M. D., Edinburgh - - - - John Blackhall, farmer, Selkirk - - - - John Wigham, junior, Salisbury-road, Edinburgh - - - - }	Shop -	Purchase.
1	{ Sir Thomas G. Carmichael, of Skirling - - - - John Cockburn, 1835 - - - - A. R. Lymington, 1835 - - - - William Wemyss, 1835 - - - - }	Spinning-mill	ditto
1	{ John Haldane, brewer, Selkirk - - - - Henry Ewen, skinner, Hawick, proprietor, 1835 - - - - }	Houses	-- Excambion with Ewen
1	{ William Muir, hosier, Selkirk - - - - Robert Fraser, merchant, Hawick, 1832 - - - - }	Houses	-- Excambion with Fraser.
1	{ William Smith, blacksmith, Denholm - - - - William Barrie, hosier, Denholm, proprietor, 1835 - - - - }	Houses	-- Partly old and part new purchase.
1	{ Walter Maburn, merchant, Peebles - - - - Ralph Richardson, tobacconist, Edinburgh, 1835 - - - - John Robertson, merchant, Selkirk, 1835 - - - - Charles Williamson, merchant, Hawick, 1835, proprietor - - - - }	House	-- Excambion with William- son.
8	TOTAL.		

30 MINUTES OF EVIDENCE BEFORE SELECT COMMITTEE

Mr.
R. G. Thompson.

(E.)

JOINT QUALIFICATIONS, Roxburghshire.—HAWICK DISTRICT, 1835.

1 March 1837.

No. of Voters.	NAMES OF VOTERS.	Species of Property.	From whom acquired.
JOINT PROPRIETORS, 1835 :			
2	Adam Arras, farmer, at Rink - - -	House	{ - - Thomas Wilson, hosier, Hawick.
	James Grieve, farmer, at Howden - - -		
	John Mark, skinner, Selkirk, 1834 - - -		
1	William Barrie, hosier, Denholm - - -	Houses	{ - - Partly by marriage, partly by purchase.
8	John Briggs, tailor, Hawick - - -	Houses	{ - - Partly their own properties, purchased long ago, and partly another to make up the value, and purchased for that purpose.
	Walter Ballantyne, shoemaker, ditto - - -		
	Richard Holt, spinner, ditto - - -		
	Benjamin Lamb, weaver, ditto - - -		
	Walter Murray, stocking-maker, ditto - - -		
	Charles Swinton, weaver, ditto - - -		
	Andrew Scott, spinner, ditto - - -		
	John Tinlin, warehouseman, ditto - - -		
2	Robert Donald, groom, at Minto - - -	House	{ - - Andrew Ewen, tanner, Hawick.
1	Alexander Robertson, blacksmith, Minto - - -	Houses	{ From his father.
2	James Halliburton, farmer, Tushilaw - - -	Houses	{ Succeeded to his father.
2	Thomas Halliburton, ditto, ditto - - -	Houses	{ From his father.
2	Robert Laidlaw, farmer, at Nether Cassock - - -	Houses	{ - - William Turnbull, stocking-maker, Hawick.
	James Patterson, residing at Clarkhill - - -		{ - - Mansion-house of Arniston, acquired by his marriage.
1	William Macdonald, of Powderhall - - -	House	{ Old purchase.
2	James Melrose, millwright, Hawick - - -	Houses	{ From his father.
2	James Melrose, jun., ditto, ditto - - -	Houses	{ By succession.
1	Andrew Oliver, labourer, Hawick - - -	Houses	{ From his father.
2	William Pringle, frame-smith, Hawick - - -	Houses	{ From his brother.
2	Robert Pringle, labourer, Hawick, 1834 - - -	Houses	{ By marriage.
1	John Purdon, hosier, Hawick - - -	House	{ Old purchase.
1	William Purdon, ditto, ditto - - -	House	{ His brother-in-law.
1	Charles Williamson, merchant, Hawick - - -	Houses	{ From an uncle.
2	Joseph Shaw, innkeeper, Hawick - - -	Houses	{ - - Feued from the town of Hawick.
2	Walter Beattie, shepherd, Fingland, 1834 - - -	Spinning-mill	{ Succession to their father.
2	Thomas Turnbull, hosier, Hawick - - -		
2	William Turnbull, ditto, ditto - - -		
2	Walter Wilson, skinner, Hawick - - -		
1	John Fiddes Wilson, ditto, ditto - - -		
1	Walter Wilson, manufacturer, Hawick - - -		
1	John Wilson, ditto, ditto, 1834 - - -		
33 TOTAL.			
JOINT TENANTS, 1835 :			
1	Peter Amos, farmer, Earlside - - -	Lands	{ James Douglas, of Cavers
1	James Cairns, junior, farmer, Hawick Moor - - -	Lands	{ Town of Hawick.
2	James Cairns, senior, ditto, ditto, 1834 - - -	Lands	{ Duke of Buccleuch.
2	William Elliott, farmer, Dinley - - -	Lands	{ - - William Turnbull, of Fenwick.
1	William Elliott, junior, ditto - - -	Lands	{ James Douglas, of Cavers.
1	Andrew Easton, farmer, at Alemoor - - -	Lands	{ Robert Pringle, of Clifton.
1	George Easton, farmer, Fenwick, 1834 - - -	Lands	
1	William Goodfellow, baker, Hawick - - -	Lands	
2	George Riddell, farmer, North Sinton - - -	Lands	
2	Andrew Riddell, ditto, ditto - - -	Lands	
JOINT LIFE-RENTERS, 1835 :			
3	John Cockburn, Plumstead, Kent - - -	Spinning-mill	{ - - Peter Wilson, manufacturer, Hawick.
	And. R. Symington, leather-factor, Edinburgh - - -		
	William Wemyss, Salisbury-road, Edinburgh - - -		
2	Walter Scott Haldane, brewer, Selkirk - - -	House	{ - - Walter Wilson, manufacturer, Hawick.
	Oliver Straton, salesman, Edinburgh - - -		
	Alexander Macdonald, M.D., Powderhall - - -		
2	John James Macdonald, ditto - - -	Lands	{ Their father.
	William Macdonald, of Powderhall, as proprietor, 1835 - - -		
	Ralph Richardson, tobacconist, Edinburgh - - -		
2	John Robertson, merchant, Selkirk - - -	House	{ - - C. Williamson, merchant, Hawick.
	Charles Williamson, merchant, Hawick, as proprietor, 1835 - - -		
	Henry Corse Scott, Sinton - - -		
1	James Corse Scott, Bengal Native Inf. 1834 - - -	Lands	{ Their father.
	Alexander Corse Scott, ditto, ditto, 1834 - - -		
	John Corse Scott, younger, of Sinton, 1834 - - -		
10			

JOINT

(F.)

JOINT QUALIFICATIONS in Roxburghshire.—HAWICK DISTRICT, 1834.

Number of Votes.	NAMES OF VOTERS.	Species of Property.	From whom acquired.
JOINT PROPRIETORS, 1834.			
2	John Peter Boileau, esquire, London - Rev. Gilbert Elliott, Temple Sowerby -	Orchard and House.	-- James Wilson, of Otterburn, and others.
2	Thomas Crichton, of Auchenskeoch, Dabton - Alexander Harley Maxwell, of Portrack -	Lands	-- John Elliot, sheriff-substitute of Roxburghshire.
2	James Dickson, bank agent, Hawick - William Dickson, residing in Hawick -	Spinning-mill	Their father, by will.
2	William Easton, hair-dresser, Hawick - George Easton, do. do. -	House	Old purchase. Wm. Easton, his father.
4	Adam Elliot, M.D. Goldlands, Hawick - Robert Elliot, farmer, do. do. - James Oliver, farmer, Borthwickbrae-burnfoot - Walter Thomson, clerk in British Linen Company, Langholm -	Houses and Orchard attached.	-- James Haliburton, farmer, Tushilaw, by purchase at public sale.
3	John Haldane, brewer, Selkirk - John Mark, skinner - ditto - John Robertson, merchant, ditto -	House	-- Thomas Wilson, hosier, Hawick.
2	Alexander Laing, manufacturer, Wilton - David Laing - ditto - Hawick -	Spinning-mill	Old purchase.
4	Robert Pringle, labourer, Hawick - George T. Pringle, gardener, ditto, his son - Robert Pringle, frame-smith, ditto, his son - James Pringle, stocking-maker, ditto, his son -	House	Old purchase.
2	Robert Scott, wright, Hawick - Thomas Scott - ditto -	Houses	-- From Robert Pringle, above, their father.
2	John Turnbull, joiner, Denholm - Alexander Turnbull, innkeeper, ditto -	House ditto	Old purchase.
2	Walter Wilson, sen. cabinet-maker, Hawick - Walter Wilson, jun. - ditto - ditto -	Houses ditto	From his father.
2	William Lindsay Watson, manufacturer, Hawick, - Thomas Watson - ditto - ditto -	House ditto	Old purchase.
2		Shop, &c.	Old purchase. His father.
2		Spinning-mill	Their father.
29	TOTAL.		
JOINT TENANTS, 1834.			
2	William Aitcheson, farmer, Menzion - George Aitcheson, residing at Linhope -	Lands	-- Their father, with consent of Duke of Buccleuch.
2	Alexander Hay Borthwell, farmer, Hoperig - James Church, farmer, Town-o-Sark -	Houses at Newcastle	-- Duke of Buccleuch, late to Thomas Scott, 10th July 1833. Scott assigns to them, 30th July 1833.
5	John Mactaggart Church, Langholm - Pulteney Mein, at Forge - Lieutenant-Colonel Nichol Alexander Mein, Crookholme - Lieutenant-Colonel William Mein, Marshhouse - William Moffat, farmer, Garwald -	Houses in Newcastle	-- Sequestrated estate of Walter Armstrong, a bankrupt.
1	James Cairns, farmer, Hawick-muir -	Lands	Town of Hawick.
1	George Easton, farmer, Fenwick -	ditto	Wm. Turnbull, of Fenwick.
1	William Keir, residing at Potholm -	Lands	-- His grandfather, with concurrence of Duke of Buccleuch.
1	William Laidlaw, farmer, Yair -	Lands	-- Mr. Terry Anderson, of Tushilaw, old lease.
1	William Paterson, farmer, Twiglees - George Paterson, ditto - 1833 -	Lands	-- The landlord, Wm. Turnbull, of Fenwick, consents to assignation by father to son.
2	Robert Stavert, residing in Manchester - Archibald Stavert, in Saughtrees -	Lands	-- Assignation by their father, with consent of Duke of Buccleuch.
1	James Paterson, farmer in Wrae -	Lands	Scott, of Merrylaw.
17	TOTAL.		
JOINT LIFE-RENTERS, 1834.			
3	John Corse Scott, younger, of Sinton - James Corse Scott, Bengal Native Infantry - Alexander Corse Scott ditto - ditto -	Lands	-- John C. Scott, of Sinton, their father.
3			

Mr.
R. G. Thompson.

21 March 1837.

(G.)

JOINT QUALIFICATIONS, Roxburghshire.—HAWICK DISTRICT, 1833.

Number of Votes.	NAMES OF VOTERS.	Species of Property.	From whom acquired.
JOINT PROPRIETORS: 1833.			
3	George Potts, writer, Hawick - - -	Houses -	Robert Heckford, Kelso.
	Thomas Potts, writer, Edinburgh - - -	ditto -	- - George Potts, writer, Hawick.
	Andrew Petrie Potts, stationer, Edinburgh -	ditto -	
3	JOINT TENANTS: 1833.		
1	Joseph Armstrong, farmer, Demainholm -	Lands -	- - David Ballantyne, of Demainholm, &c.
1	William Aitchison, farmer, Linhope - -	Lands -	Duke of Buccleuch.
2	Andrew Commen, farmer, High Tosft - -	Lands -	- - Andrew Dickson, of Alton, &c.
	Adam Commen, ditto ditto - -	Lands -	Duke of Buccleuch.
1	William Elliot, farmer, in Mungaton -	Lands -	
1	James Grieve, farmer at Branxholm-park -	Lands -	- ditto.
	William Grieve, ditto ditto 1832	Lands -	- ditto.
1	Thomas Murray, farmer, Whisgills - -	Lands -	- ditto.
1	John Oliver, jun., farmer, Stitchelhill -	Lands -	- ditto.
1	Walter Pindan, farmer, Hawick - - -	Lands -	- - James Douglas, of Cavers, and others.
1	George Paterson, farmer, Twiglees - -	Lands -	- - William Turnbull, of Fenwick.
1	Thomas Stavert, farmer, in Saughtrees -	Lands -	Duke of Buccleuch.
1	Thomas Waugh, farmer, in Burnmouth -	Lands -	- - David Ballantyne, of Demainholm, &c.
12	JOINT LIFE-RENTERS: 1833.		
	None.		

(H.)

TABLES OF VOTERS in the County of Roxburgh: 1832-3-4-5 & 6.

DISTRICT OF MELROSE.

No. 1.

PRESENT ROLL, 1836.	DESCRIPTION OF VOTERS.				
	Proprietors.	Life-renters.	Tenants.	Old Roll.	TOTAL.
Residents - - -	205	26	99	13	343
Non-residents - -	113	41	6	23	183
TOTAL - -	318	67	105	36	526

No. 2.

Enrolled.	DESCRIPTION OF VOTERS.					WHEREOF NON-RESIDENT.			
	Total in each Year.	Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant.	Old Roll.
1832	348	197	20	88	43	42	6	4	26
1833	42	25	2	15	-	5	-	1	-
1834	150	108	25	17	-	48	14	1	-
1835	110	71	24	15	-	30	16	-	-
1836	57	28	16	13	-	9	13	2	-

DISTRICT

Mr.
R. G. Thompson.

21 March 1837.

DISTRICT OF HAWICK.

No. 1.

PRESENT ROLL, 1836.	DESCRIPTION OF VOTERS.				
	Proprietor.	Life-renter.	Tenant.	Old Roll.	TOTAL.
Resident - - -	226	18	192	6	442
Non-resident - -	44	22	23	10	99
TOTAL - -	270	40	215	16	541

No. 2.

Inrolled.	Total in each Year.	DESCRIPTION OF VOTERS.				WHEREOF NON-RESIDENT.			
		Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant.	Old Roll.
1832	347	181	9	137	20	10	-	4	13
1833	71	44	3	24	-	4	2	1	-
1834	112	78	8	26	-	25	3	7	-
1835	101	68	14	19	-	13	10	3	-
1836	57	35	10	12	-	9	9	1	-

JEDBURGH DISTRICT.

No. 1.

PRESENT ROLL, 1836.	DESCRIPTION OF VOTERS.				
	Proprietor.	Life-renter.	Tenant.	Old Roll.	TOTAL.
Resident - - -	80	22	159	23	284
Non-resident - -	27	15	4	11	57
TOTAL - -	107	37	163	34	341

No. 2.

Enrolled.	Total in each Year.	DESCRIPTION OF VOTERS.				WHEREOF NON-RESIDENT.			
		Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant.	Old Roll.
1832	196	51	11	100	34	7	-	2	11
1833	25	11	3	11	-	2	1	-	-
1834	46	22	10	14	-	7	6	-	-
1835	39	11	4	24	-	5	1	-	-
1836	35	12	9	14	-	6	7	2	-

Note.—No. 2. of this District shows the Roll of 1836, and does not embrace the Voters who have been struck off since 1832.

Mr.
R. G. Thompson.

21 March 1837.

DISTRICT OF KELSO.

No. 1.

PRESENT ROLL, 1836.	-DESCRIPTION OF VOTERS.				
	Proprietor.	Life-renter.	Tenant.	Old Roll.	TOTAL.
Resident - - -	183	42	170	8	403
Non-resident - -	59	24	6	16	105
TOTAL - - -	242	66	176	24	508

No. 2.

Inrolled.	Total in each Year.	DESCRIPTION OF VOTERS.				WHEREOF NON-RESIDENT.			
		Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant.	Old Roll.
1832	297	132	13	119	33	21	-	2	21
1833	46	17	8	21	-	1	3	1	-
1834	84	59	9	16	-	21	4	1	-
1835	83	43	18	22	-	17	7	4	-
1836	43	14	19	10	-	3	11	-	-

Note.—No. 2. of this District is defective, as it does not show the total Inrolments in 1832, but only those standing on the Roll in 1836.

(G).

GENERAL TABLE.—ROXBURGHSHIRE.

No. 1.

PRESENT ROLL, 1836.	DESCRIPTION OF VOTERS.				
	Proprietor.	Life-renter.	Tenant.	Old Roll.	TOTAL.
Resident - - -	694	108	620	50	1,472
Non-resident - -	243	102	39	60	444
TOTAL - - -	937	210	659	110	1,916

No. 2.

Inrolled.	Total in each Year.	DESCRIPTION OF VOTERS.				WHEREOF NON-RESIDENT.			
		Proprietor.	Life-renter.	Tenant.	Old Roll.	Proprietor.	Life-renter.	Tenant.	Old Roll.
1832	1,188	561	53	444	130	80	6	12	71
1833	184	97	16	71	-	12	6	3	-
1834	392	267	52	73	-	101	27	9	-
1835	333	193	60	80	-	40	18	2	-
1836	192	89	54	49	-	27	40	5	-

JOINT

(J.)

JOINT QUALIFICATIONS in Kelso, &c.

No.	NAMES and DESIGNATIONS.	Liberal.	Tory.	Year of Inrolment.	NATURE of SUBJECTS of Qualification.	
I. JOINT PROPRIETORS:						
3	{ William Smith, writer, Kelso James Smith, sub-editor, of Kelso Mail - James Cunningham, brewer, Edinburgh - }	-	-	1833	{ - House and stables, in Kelso, occupied as an Inn by Charles Gow, Roxburgh-street - }	{ - - This property was acquired from George Watt, merchant, Kelso, by Walter Ker, jeweller, and William Smith: the former is now inrolled on another subject; the latter is the brother of one of the Tory agents. They afterwards sold to the other party. (See Mr. Main's Letters of 9th March 1837.)
3	{ Richard Balmer, mason, Cessford - William Turnbull, smith, Muserig - Alexander Tait, steward, Floors - }	-	-	1834	{ House in the Woodmarket, Kelso - }	{ - - Acquired from Robert Heckford, by the two first, and John Bulmuir, who sold to Tait. The understanding was, that each was to pay 25 <i>l.</i> , but a bond has been granted to Mr. Douglas of Addiston, for the full price, 550 <i>l.</i> ditto.
6	{ John Bonor, banker, Edinburgh Henry John Burn, W. S. ditto Alex. Cunningham, W. S. ditto John Elder, W. S. - ditto Alex. Thomson, W. S. ditto James Primrose, writer, ditto }	-	6	1834	{ - - House-property in the Townhead of Kelso, and gardens - }	{ - - This acquired from the heirs of John Winram. The agent in the purchase was Primrose, Thomson & Elder's clerk. It is probable that these parties would pay the price, as nothing appears in the record; but it is plainly a political purchase.
3	{ Geo. Hilson, sen. manufacturer, Jedburgh - George Hilson, jun. ditto ditto James Hilson, - ditto ditto }	3	-	1834	{ House-property at James-place, Kelso - }	{ - - Acquired from John Dickenson, tailor, Kelso, at 800 <i>l.</i> ; 500 <i>l.</i> of which was advanced on a bill; the balance was paid by the parties, who are all men of substance and property.
2	{ Peter Johnstone, clerk, Cross-keys Inn, Kelso - Ralph Kerss, fisher, Birgham }	-	2	1834	{ - - House-property in the Townhead of Kelso, and garden - }	{ - - Acquired from James Hunter, writer, Kelso, at 600 <i>l.</i> bond, to raise for same sum by the parties, and Charles Hossack, who sold to Burnlees. (See Mr. Main's Letters of 9th March.)
2	{ Allan Martin, grocer, Kelso - John Ormston, shoemaker, do. - }	-	2	1834	{ - - House-property at the foot of the Horse-market Kelso - }	{ - - Acquired from James Pyle, meal-dealer, Kelso, at 430 <i>l.</i> , bond to raise for same sum. (See Mr. Main's Letters of 9th March.)
2	{ John Mauchlin, vintner, Kelso William Pyle, grocer, ditto - }	2	-	1834	{ House in Roxburgh-street, Kelso - }	{ - - Acquired from the heritable creditors of James Melrose, joiner; the price has been advanced on the bill of the parties, drawn by Mr. Douglas of Addistone.
3	{ Sir David Milne, Milne Graden David Milne, advocate, Edinburgh Alex. Milne, R. N. - }	-	3	1834	{ House and garden, called Pringlebank, Kelso - }	{ - - Acquired from the Rev. George Gray, Maybold, of course for the franchise, but otherwise supposed <i>bond fide</i> .
2	{ Richard Muir, writer, Kelso - Allan Shankly, ditto - ditto - }	-	2	1834	{ House at the bottom of Horse-market, Kelso }	{ - - Acquired from the trustees of James Rutherford, tailor, Kelso, at 400 <i>l.</i> , bond to raise for 300 <i>l.</i> , clerks of Mr. Smith, Tory agent. (See Letters of 9th March.)
2	{ John Smith, pork-curer, ditto John Thomson, vintner, Crichtondean - }	-	2	1834	{ House in Abbey-close, Kelso - }	{ - - Acquired from Messrs. Davidson and Curle, Kelso. No doubt for franchise, but it does not appear how the price was paid, as it would not be advanced by the parties; it is most probably on bill.
3	{ Daniel Taylor, farmer, Georgefield George Taylor, vintner, Whiteburn James Turnbull, ditto, Carfraemill; now Charles Purves, Lylestone; Turnbull dead - }	-	3	{ 1834 1835 }	{ House and yard, at foot of Wood-market, Kelso }	{ - - Acquired from John Somerville, manufacturer, Wooden-mills, at 770 <i>l.</i> , bond to raise for same sum. (See Letters of 9th March.)
4	{ James Brown, merchant, Glasgow George Young, writer, ditto William Davidson Falconer, hosier, ditto Arch. Falconer, hosier, ditto - }	-	4	1835	{ House in Bridge-street, Kelso - }	{ - - Acquired from the heirs of John Mein, at 945 <i>l.</i> , borrowed on bond from James Mein, Jedburgh, 800 <i>l.</i> ; no doubt acquired for political purpose, but I have no further information; it is a very bad bargain.
2	{ Andrew Bulman, Floors - Geo. Craig, shoemaker, Kelso - }	2	-	1835	{ Houses and yard at the Coal-market, Kelso - }	{ - - Acquired from the heirs of Andrew Kennedy, by John Bulman, wright, Kelso, who purchased for the sake of his trade, and occupies the property; he put his father and brother-in-law into the disposition, but the whole price was paid without the aid of any party.
3	{ James Hooper Dawson, Kelso John Dawson, Morebottle Tofts Charles Dawson, ditto - }	3	-	1835	{ House in Union-street, Kelso - }	{ - - Acquired from Dodds and Cockburn, masons, Kelso, at 700 <i>l.</i> The whole price was procured and paid without the aid of party; the expenses are still due to Mr. Main.
2	{ John Henderson, Falside William Smith, Morebottle - }	-	2	1835	{ House and stables in Bellmount-place, Kelso - }	{ - - Acquired from George Jerdan, proprietor of Kelso Mail. This I suspect to be a nominal purchase, from the circumstances and relationship of the parties. (See Letters of 9th March.)
42	Carried forward -	13	29			

(continued.)

(J.)—JOINT QUALIFICATIONS in Kelso, &c.—continued.

No.	NAMES and DESIGNATIONS.	Liberal.	Tory.	Year of Inrolment.	NATURE of SUBJECTS of Qualification.	
42	Brought forward - -	13	29			
	JOINT PROPRIETORS—continued.					
2	{Robert Ainalie, jun., W.S., Edinburgh Thomas Mitchell, tailor, Kelso}	2	-	1836	{House in Roxburgh-street, Kelso - -	{-- Acquired from Gray & Ker, masons, Kelso. Mr. Ainalie paid 50 l. and granted bill for 155 l. Mr. Mitchell's price is advanced on a bill between the purchaser and sellers.
2	{James Bookless, draper, ditto Thomas Jamieson, writer, ditto}	2	-	1836	{House in Horse-market, Kelso - - -	{-- Acquired from Alexander Leadbetter, stationer, Kelso. (See Mr. Main's Letters of 9th March.)
2	{David Swanston, merchant, ditto Alexander Laidlaw, ditto, ditto}	2	-	1836	{House in Roxburgh-street, Kelso - -	{-- Acquired from Gray & Ker, masons, Kelso. (See Mr. Main's Letters of 9th March.)
2	{William Archbald, writer, Kelso John Melrose, joiner, ditto -}	2	-	1834	{House in Roxburgh-street, Kelso - -	{-- Mr. Archbald purchased for Melrose's sister, who was unable to pay the price, and a disposition was taken to him and the brother. Archbald, who is a partner with Mr. Main, paid the whole price.
50		21	29			
	II. JOINT LIFE-RENTS:					
2	{William Gray, Hownslow - James Gray, baker, Birgham -}	-	2	1834	{House-property in the Townhead of Kelso -	{-- Acquired from Andrew Gray, baker, Kelso, their brother, whose property was previously burthened, and who since received 100 l. from Rose. (See Mr. Main's Letters, 9th March.)
4	{John Tod, clothier, Edinburgh Alexander Tod, baker, ditto - William Tod, jun., Laswade - Rev. Andrew Tod, Balerno -}	4	-	1835	{The Queen's-head Inn & premises, in Kelso -	{-- Acquired from their father, William Tod, Laswade. The deeds are now out of my possession, but I think there was a consideration given; the transaction was managed in Edinburgh. I believe Mr. Andrew Murray, jun., will be able to give you information.
2	{James Cranston, jun. Smailholm - - - William Cranston, currier, Galashiels - - -}	-	2	1835	{House and lands in Smailholm - - -	{-- Acquired from their father, James Cranston, portioner, in Smailholm. I believe the deed was gratuitous, but the parties were not objected to, the father and another son being inrolled by Whig agents.
3	{Charles Robson, jun., London - William Robson, ditto - George Robson, shopman, Kelso -}	3	-	1836	{House-property in the market-place in Kelso -}	{-- Acquired from their father, Charles Robson, grocer, Kelso. This was a gratuitous deed, and the parties arrange amongst themselves as to rent.
4	{William Dun, Philiphaugh Alexander Dun, Henderland - John Dun, Falahill - William Rutherford, writer, Galashiels - - -}	-	4	1836	{House in the Horse-market, Kelso - -	{-- Acquired from John Rutherford, merchant, Kelso, for a consideration of 550 l., rent, 41 l. A political transaction, and I should imagine the price will stand on bills, though the parties are good enough. They are distant connexions of the grantor.
4	{Captain Baillie, 72nd Reg. - James Pringle Baillie, Mellerstain - - - Thomas Baillie, ditto - Rev. John Baillie, Yorkshire -}	-	4	1836	{-- On part of the lands of Western Cornick, in the parish of Smailholm - - -}	{-- Acquired from their father, George Baillie, of Jerviswoode. The claims were not objected to, and I do not know the nature of the transaction, but I should imagine it to be gratuitous. The lands compose part of the estate of Mellerstain, but, from the description, I presume they have been added to that estate after the entail.
19		7	12			
	III. JOINT TENANTS:					
3	{Robert Scott, Boughtrig - Thomas Scott, ditto - John Scott, ditto -}	-	3	{1832-4 1832-4 1834}	{-- Stock farm in the parish of Hownam, belonging to William Oliver Rutherford, of Edgerston -}	{-- The two former claimed in 1832 as joint tenants, and the latter was added to the roll in 1834; the three claiming as joint tenants. They all reside on the farm, and I suspect it to be a <i>bond fide</i> case.
2	{George Park, Wester-wooden - John Park, ditto -}	-	2	{1832-4 1834}	{-- Farm of the Duke of Buccleuch's, in the parish of Eckford -}	{-- Father and son. I tested the son's interest in the Registration Court, and was satisfied.
3	{James Bryden, Philogar - William Bryden, ditto - James Bryden, Kennelhead, Dumfries - - -}	-	3	{1832-5 1835 1835}	{-- Farm belonging to Messrs. Dickson of Chatto, in the parish of Hownam -}	{-- James Bryden first claimed as sole tenant, and then as joint tenant with the others, his nephews. The lease appeared to be formal. Only one of the parties resides on the farm, William Bryden.
3	{Major Allan, Edinburgh - Thomas Allan, banker, ditto - Thomas Landale, S.S.C., ditto -}	-	3	1835	{-- The Plough Inn and premises in the village of Yetholm, held on a rental right from Wauchope of Niddrie -}	{-- Acquired from George Henderson, the former rentaller; the agent in the transaction was Primrose, before alluded to, and of course is a political transaction. I do not now recollect the price.
2	{George Robeson, Wrangholm - George Robeson in Brotherstone -}	-	2	{1832-5 1836}	{-- A farm of Baillie, of Mellerstain, in the parish of Smailholm -}	{-- The father, George Robeson, Wrangholm, inrolled in 1832 as sole tenant, afterwards took his son into the lease, and both inrolled as joint tenants. No objection being taken, we do not know any thing of the circumstances.

Mr. Donald Horne, again called in; and further Examined.

7843. *Chairman.*] HAVE you been employed professionally in any other counties besides Roxburghshire and Selkirkshire?—I cannot say I have been employed professionally in any other counties; my own estates lie in the county of Caithness, and, as one of the conservatives of the county, I feel a strong interest in the registration of votes; but I never made any professional charge for business done there.

Mr. Donald Horne.

21 March 1837.

7844. Have your firm acted as professional agents in the county of Caithness?—My partner and myself are in the same situation as to making professional charges.

7845. Did you or your partner take charge of the registration at Caithness at any of the late Registration Courts?—My partner, accompanied by Mr. Swinton, advocate, took charge of the Registration Court in the county of Caithness in 1836. In December 1835 I went to the county of Caithness upon my own private affairs; partly upon my own private affairs, and partly upon professional business; and I then found that Mr. Trail, the liberal candidate for the county of Caithness, or his father, (I do not know which of the parties it was,) were in the course of disposing of a variety of village houses for the purpose of creating freehold qualifications in the county, upon their estate. In consequence, I not only granted life-rent deeds myself, but I recommended to my conservative friends to do the same thing, taking care that the transactions were perfectly *bonâ fide*.

7846. Was that recommendation followed?—I think it was by two or three of them.

7847. In the life-rents which you yourself created, did you receive money for the life-rents you conveyed?—I granted one life-rent for love and favour. I granted another to my manager, a man of substance, at a fair price, with which he credited me in his accounts. I granted another to a person of the name of Davison, to whom I consider myself as due about the amount of the price; but he gave his promissory note for the price until we should settle accounts; and I granted three other life-rent dispositions in favour of responsible parties, who granted me their promissory notes for the price.

7848. What was the nature of those promissory notes; were they bills?—I do not call them bills; they were promissory notes, at one day's date.

7849. Did you not also purchase last year a property, which was conveyed to several life-renters, in the county of Caithness?—I made a bargain for a property in Thurso, in favour of a person of the name of Simpson, one of my shepherds, who paid the price himself, and who was perfectly capable of paying three times the sum.

7850. I ask you of a property conveyed to several persons jointly; did you not purchase property in the county of Caithness, which was conveyed to several individuals, who were inrolled upon it at the last registration?—I do not recollect the particulars of such a purchase; there was a purchase made from a person of the name of Forsyth, and small portions of which were conveyed to two or three individuals who held properties of their own, and on which, with their own properties, some of them were registered; but I state that I cannot enter into any particulars with any degree of accuracy, because I was not in any of the Registration Courts, and paid no attention to the details.

7851. Was there a case of life-rent existing in Caithness of this nature, before those created at your recommendation?—I really cannot answer that question.

7852. Can you state that there were none?—I cannot say that there were none, nor that there were any.

7853. Do you believe that there were any?—I think that that answer answers the belief.

7854. Did you ever hear of any life-rents of that kind in the county of Caithness before?—I never examined the register of the county of Caithness, except to see the names of the individuals registered.

7855. Mr. B. Baring.] What were those transactions of Mr. Trail, to which you alluded just now?—My information was, that Mr. Trail was about splitting a village property, for the purpose of creating freehold qualifications; and I have understood that, in the Registration Court, a great many, upwards of 20, claims of that description, were given in by the tenants upon Mr. Trail's estate, not qualified as farmers, and dependents upon Mr. Trail; but I have already said, that

Mr. Donald Horne. I have not examined the proceedings in the Registration Court, and cannot speak with any degree of accuracy.

21 March 1837. 7856. *Chairman.*] You cannot state the names of any of those individuals?—Indeed I cannot.

7857. Can you state from whom you got your information about them?—Yes, I think I can state that I got it in conversation with my partner and with Mr. Swinton, after their return from the courts.

7858. And that information was subsequent to the Registration Courts of 1836?—It must have been.

7859. The property I speak of, I find here was bought from a gentleman of the name of Forsyth, and upon which several life-rents were created?—I have referred to that.

7860. Did you conduct the purchase yourself?—Mr. Forsyth was in Edinburgh at the time, and either I or my partner made the purchase from him in Edinburgh.

7861. Who paid the purchase-money?—I do not think it is all paid yet.

7862. Has Mr. Forsyth been paid yet?—If he has been paid, he has been paid in the country; he lives at Caithness.

7863. To whom was the conveyance taken; was it taken to yourself in the first instance?—No.

7864. To the individual life-renter?—Yes, I believe so.

7865. Have they given you any consideration for the price?—The property never belonged to me; it was never vested in my person.

7866. Was the disposition taken, in the first instance, to them?—Yes, I presume so, but I do not recollect the circumstances; and it is indispensably necessary, to arrive at the facts, that some other witness should be examined.

7867. Has any consideration been given by those individuals, to your knowledge, either by bill or otherwise?—I do not know.

7868. Has any been given to you?—No.

7869. You are a freeholder of the county of Caithness?—My family estates are in the county of Caithness; I was registered on the old roll, and I am also registered upon the new roll, but I never exercised any franchise, either under the old or the new roll of the county of Caithness.

7870. Are you a voter in any other county besides the three counties we have examined you upon?—Yes, I am an elector in the county of Sutherland and in the county of Ross, under qualifications which I possessed before the passing of the Reform Bill; I am also an elector in East Lothian.

7871. Are you not a voter in Mid Lothian?—In the county of Edinburgh and in East Lothian.

7872. Those two last qualifications were acquired subsequent to the passing of the Reform Bill?—My qualification for the county of Edinburgh was purchased at a public roup, I think, and it was registered in 1834; my qualification in East Lothian is upon property on which I had acquired a life-rent from a brother-in-law, Mr. Ogilvie, and which had been previously acquired by him from Sir John Dalrymple and the road trustees of the county, and the prices are both paid.

7873. How do you mean previously acquired; do you mean as life-rents?—No, property absolute; I beg to state that, in so far as regards the county of Caithness, it is indispensably necessary that some witnesses, better acquainted with the subject than I am, should be examined.

7874. *Lord Advocate.*] Have you any other observations you wish to make upon any part of your evidence?—No, I have corrected my evidence, so far as it goes.

Martis, 11^o die Aprilis, 1837.

MEMBERS PRESENT.

Mr. W. Campbell.
Sir Hugh Campbell.
Mr. B. Baring.
Sir William Rae.
Captain Ferguson.
Mr. Warburton.

Mr. Fox Maule.
Sir Thomas Fremantle.
Mr. Divett.
The Lord Advocate.
Mr. E. Buller.
Mr. Dunlop.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Patrick Shaw, Esquire, called in; and Examined.

7875. *Chairman.*] YOU are an advocate, are you not?—Yes, I have been at the Scottish Bar since Christmas 1819. *Patrick Shaw, Esq.*

7876. You have had some experience in the Registration Courts of Scotland, have you not?—Since 1835 I have had considerable experience in the Registration Courts of Scotland; prior to that time I was not engaged in any of them. I only knew previously of the nature of their proceedings, by common conversation among the members of the Bar. *11 April 1837.*

7877. Have you had occasion to know the general state of the constituency in 1832?—I have had occasion to know it only by information. I know what was the law and practice in 1832 with regard to those matters which have been since presented to my mind.

7878. Do you not hold a situation at the Scottish Bar as reporter?—I do not hold a situation, but I have been engaged, since the year 1821, in reporting all the cases that came before the two Inner Houses. I have also been engaged in reports of the House of Lords, since 1821. I have retired from the reports of the Court of Session; but I am still engaged in those of the House of Lords.

7879. That has given you a considerable opportunity of making yourself acquainted with the state of the law in Scotland as to the holding of properties?—I should think so; I have been engaged individually or along with other gentlemen in reporting I should suppose ten thousand cases.

7880. You first commenced attending the Registration Courts in 1835?—Yes; I attended the Registration Court of the Leith district of burghs, and the Appeal Court of the Ayr district of burghs; I was present also as an attending counsel, not as counsel in the matter at all, but to see how matters were proceeding, in the Appeal Registration Court of the county.

7881. In what other county have you had experience?—In that same year I was called on rather suddenly to attend one particular case in the Registration Court of the county of Peebles; I was also employed to attend the Appeal Registration Court of Mid Lothian. In the year 1836, I was retained to attend the Registration Court and the Appeal Court of Peebles-shire; and I was requested, if I had any spare time, to attend the Registration Court and Appeal Court of Stirlingshire; I was also retained to attend, during any time I might have, the Mid Lothian Registration Court. I attended the whole of the Peebles-shire Registration and Appeal Courts; the greater part of the Registration and Appeal Courts of Stirlingshire, and I think two days in Mid Lothian.

7882. What was the general nature of the constituencies, and the qualifications under which the constituents were inrolled when you were first employed as counsel, in 1835 and 1836?—I do not know whether the Committee wish me to go into the circumstances descriptive of all the classes of cases. There were a great number of what I should call *bonâ fide* cases presented; but unless otherwise directed, I shall confine myself to cases which strike me as attended with peculiarities. The first case which attracted my attention as presenting any thing peculiar was the case I have alluded to in Peebles-shire. It was the case of Mr. Aitcheson's seven sons. It presented to me that of which I had before heard, a case of joint life-rent; I can state generally the nature of that case: and I have also the sheriff's notes, which, if the Committee wish, I can communicate to them. The general nature of the case was this: Mr. Aitcheson is a proprietor, in Peebles-shire, of an estate called Borlands; he conveyed, by a disposition in

Patrick Shaw, Esq.

11 April 1837.

life-rent, a field yielding a rent of somewhat above 70 £. to his seven sons. That field, as well as the rest of the property, was in the occupancy of the father; and (according to the statement made by the father in the oath which he emitted) he agreed to take a lease of this field from his seven sons. I could not investigate very minutely the nature of the transaction, because I had not an opportunity of examining the father; he was a man in rather an infirm state of health, and it had been arranged that his oath should be taken as a witness in Edinburgh, or at his own residence. I had the oath in a written shape put into my hands, and it is from that oath, and from the examination of his agent and one of his sons, that I ascertained the facts. The father stated in his oath that he meant to regard this conveyance to the sons as a part of their provisions in executing his deed of settlement; he further stated that he had executed other and similar deeds in favour of strangers, but that he had retained those in his possession, and had destroyed them. When I was called on to argue the case, I made three objections to it: The first was, that it was an anomalous right, according to the law of Scotland, because here was a party conveying a property to seven individuals in life-rent, jointly *pro indiviso*, and there being no clause in that deed by which, in the event of the death of any one of the life-renters, the right should accress to the other life-renters, it necessarily followed that the father must on the death of each come *pro tanto* into the plenary right or the full dominion of the property; and I recollect putting this case to the sheriff, as showing the anomalous nature of it: Supposing five out of those seven sons died, then the father, being proprietor of the five-sevenths, and being also tenant, and it being the rule of law, that where there are life-rents only of part, the proprietor must unite with the life-renters in sequestrating the tenant for his rent, or removing him from his lands; it appeared to me to be a very strange position in which those two surviving sons were placed: If they wished to remove their father, or to sequester his effects for rent, they must previously have the consent of the very person who was to be removed, and against whom this diligence was to be issued for the recovery of rent. Upon this part of the case the sheriff intimated, so far as I recollect, that the matter was so much settled, that it was quite unnecessary to give any declared opinion, and he repelled the plea. The second objection which I took depended on matters of fact, and resolved into this—that there was no legal evidence of possession. The rents were arranged in this manner; a Mr. Brodie was agent for both the father and the sons, and the father was debited, or was to be debited, in the books with the rent which he ought to pay to the sons, and the sons got credit, or were to get credit, in those books for the rents which they were entitled to recover from the father. I rather think they had arranged a receipt in the month of July, when the court was sitting. It was admitted that no money whatever had passed; but there was a receipt produced, signed by the seven sons, as if money had passed from the father. I maintained, upon these grounds, that there was no legal possession. I also, in the third place, maintained, that there was not sufficient evidence of the delivery of the deeds. The sheriff intimated, that there was not sufficient evidence of possession, and that he had great doubts as to the delivery, but that it was unnecessary to go into that. The first case was accordingly rejected; then another case was called, in which they attempted to prove the delivery. The way in which they attempted to prove that, was, by showing that the deeds had been given to Mr. Donald Horne, to be held for the life-renters. On cross-examination, however, it appeared that that communication with Mr. Horne had been for the purpose of seeing whether the deeds were in a proper shape. The sheriff intimated, that he did not think the evidence of the delivery was sufficient, and at all events there was no evidence of the possession to satisfy his mind. In this way those seven cases were rejected in the Registration Court. I was not employed to attend the Appeal Court; another counsel had been retained in the cases generally; I had been called out in his absence; the counsel who had been retained, attended the Appeal Court; the judgment of the sheriff was reversed by the Appeal Judges; I do not know on what grounds. This was the first occasion on which I had an opportunity of seeing any of those cases falling under the class of those which we consider as for the creation of votes.

7883. Since that period have you had occasion to see many of that kind of votes?—Yes, I have; but perhaps I may be allowed first to exhaust my information as to what took place in 1835, with reference to the case of the Aitchesons; because I have reason to believe, that in consequence of it and of my recommendation,

mendation, it gave rise to the creation of votes of this nature on the liberal side in Peebles-shire. On the decision being pronounced by the sheriff, by which he rejected the claims, I went to the residence of Sir Thomas Carmichael, at Castle Craig, and there I had an opportunity of conversing with Mr. Carmichael, who had announced himself as a candidate for that county. I stated to him, and I did so without any suggestion on his part, that I was very much afraid, as it was a nice and difficult question in point of evidence, a different view of the question might be taken in the Appeal Court, and that the votes would be admitted. I further stated, that I thought the system was an exceedingly bad system, and that I thought no one should have recourse to it unless compelled to have recourse to it in self-defence; but I suggested that if they were admitted, and the system were thus completely established, I could see no limitation to the mode in which it might be carried on. I therefore suggested to him, that both for the defence of the local constituency, and to support his own interests, I thought he ought in self-defence to have recourse to the same system. In consequence of that suggestion, I was consulted in the course of the autumn of that year, (property having been purchased, I forget at this moment the name of it, but it belonged at one time to Lord Medwin), as to the mode in which that should be done; I recommended a deed to be made, very much in the same manner as the deeds in Aitcheson's case had been made, and in order to prevent all possibility of question as to the evidence of possession, that infestment should be taken. My advice was adopted, and a deed was executed; I do not recollect at this moment who the parties were; I did not know at the time who they were, but I think there were 21 persons put as joint life-renters upon that property, and infestment taken.

7884. Were those persons inrolled without paying the purchase-money?—I had no opportunity of knowing those details, being consulted only as counsel; the deed set forth payment, but I cannot say whether or not all paid money. I know that in one instance no money was paid; I know that from this circumstance, that Mr. Crawford, who has been examined before this Committee, attended as junior counsel with me at the Registration Court, and he there stated, when he was charged with participating in this system, that he never regretted a thing more in all his life than having participated in it; he afterwards told me that he had given a bill for the amount, and that he deeply regretted he had been in any degree a participator in a system of this nature, even in defence.

7885. Since that case of Aitcheson's, have cases of joint-life rents become common in that county?—Exceedingly common; but I am speaking generally from recollection and impression; we have indeed little or no business, comparatively speaking, before the courts, but these life-rents.

7886. How many claimants of that description were there?—There were, altogether, I should think, including those made by Mr. Carmichael, (and I think he made seven additional to those I have mentioned), altogether about 130 joint life-renters.

7887. Were there many made by individual proprietors in batches?—Yes; I think there were eight batches on the property of Sir John Hay; the first batch consisted of seven individuals (I have their names here, if it is wished), the whole making 36; those were the claims made; we succeeded, I think, in rejecting eight or ten of them.

7888. Were there 36 conveyances of life-rent made on that estate?—There were eight separate dispositions in favour of those 36, dividing the 36 among them; then on the estate of Mr. Mackenzie, of Portmore, I think there was one disposition in favour of 24; those were all admitted; Mr. William Forbes, advocate, made upon Slipperfield, 20.

7889. *Sir Thomas Fremantle.*] Were they all admitted?—They were; Mr. Allen, of Glen, 11; Sir James Montgomery, 3; the Rev. Mr. Beresford, 5; Mr. Carmichael, 28; Sir Thomas Carmichael, 3; but two of those were rejected.

7890. *Lord Advocate.*] On what ground?—On the want of value; Sir Thomas's estates, I understand, are entailed; he had no means of creating those votes upon his own estate, and he purchased one house on which there was one life-rent given; then another purchase was made in the village, I think, of Innerleithing, under these circumstances: He was going on one occasion with his son to attend a political dinner to be given to the latter; the people took the horses out of the carriage, and were drawing the carriage along, when the car-

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riage ran over a child, which was killed; in consequence of this he gave the father of that child a life-rent as a recompense for this misfortune; and the man, I was told, voluntarily came forward and stated that he wished to be inrolled; in consequence of the want of value, I think, of a few shillings, the claim was rejected. I was asked just now whether the claims which I have mentioned above were admitted:—Sir John Hay's cases were all very keenly and anxiously contested; we contested them on legal grounds, because we did not think there was any relevancy in going into the inquiry as to the value given; I think there were eight to ten rejected on technical grounds,—on objections arising out of the deeds; Mr. Mackenzie of Portmore's cases were also very anxiously investigated, particularly with reference to the nature of the right, and the burdens that were upon the estate. That was more particularly done in the Appeal Court; there were very heavy burdens upon the estate, and there was in particular an irredeemable life-rent annuity of 800*l.* a year in favour of his mother; I had recently at that time been in the Appeal Court of Stirlingshire, and it had been held there that such a right (an irredeemable bond of annuity) formed a good ground of qualification; I argued upon that ground before the sheriffs of the Peebles-shire Registration Appeal Court, that there being here a qualification upon the property, it was impossible to put an additional qualification over that qualification. That argument was repudiated by the sheriffs, who held that that was not a ground for qualification. There were other legal grounds gone into, with which I will not detain the Committee.

7891. *Chairman.*] You say you considered this right of life-rent altogether an anomalous right in the law of Scotland?—I do not say that life-rents are anomalous; neither can I say that joint life-rents are anomalous, except in the case I explained of a back lease; but, assuredly, in the whole course of my experience, I have not the slightest recollection of ever having seen a joint life-rent until I saw the case of Mr. Aitcheson's.

7892. Is the deed a peculiar one by which those life-rents are granted?—It is peculiar in as far as the right is peculiar; it is in the usual form of deeds of conveyance of properties; in many instances no doubt it is left in a very incomplete state; we require to have precepts and seisin so as to give a real title to the land, but in consequence of it not being necessary by the Reform Act to have seisin in the lands, very often there is no precept of seisin, so that if a person wanted to make his right real by the law of Scotland, he could not make it real unless he asked the aid of the Court of Session by a particular process.

7893. Is the reservation of the fee by the grantor in itself a peculiarity?—The reservation of the fee is very peculiar; the giving away the life-rent and reserving the fee is what I never recollect having seen, except in the case of the creation of votes under the old system.

7894. In the case of those life-rents which have now become common, have you had occasion to know whether the acquiring the right is real, and whether any equivalent is given in return for the right?—There is always the form of an equivalent given either in the shape of love and affection, (and indeed there has been of late a great display of love and affection between father and children, but it is displayed only where they agree in politics; it has certainly become more prevalent than I have had occasion to see formerly,) and there have been many cases in which bills have been given, but very often undoubtedly money is given. Every one however knows, who is acquainted with practice, that it is the easiest thing to pay money and to make it appear in a court of law that it was an onerous and fair transaction. Suppose a proprietor is anxious to put a person upon the roll, and it is not convenient for that person to advance the money, the agent of the proprietor may get the money from him, and it may be arranged that a bill shall be given to the agent, who thereupon may put the money into the hand of the person to be inrolled, whereupon he can put the money into the hands of the proprietor. I have not the slightest doubt in my own mind, that the money in many instances is returned, and the whole matter cancelled.

7895. Has any case of that description fallen within your experience?—I do not at this moment recollect that cases of the money being given back have come within my knowledge, but it is a matter which may very easily be done.

7896. Is it your opinion, from the experience you have had, that the life-rent cases, or the majority of them, are of a fictitious character, or that they are real transactions?—My impression is, that they are fictitious in one sense; that the great majority of them are such transactions as a man would never have entered into,

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into, except for the purpose of creating votes; that they are not for the purpose of acquiring a patrimonial estate, but for the mere purpose of creating votes by fictitious means. I hope the Committee do not understand me to say that in all cases there is an actual fraud committed, but what I mean to say is, that in contradistinction to claims on proper patrimonial estates or property, they are purchases merely for the purpose of acquiring a vote. We have been accustomed to call them fictitious cases, or, as we adopted the expression in the Peebles-shire courts, "suspicious cases."

7897. Do you believe that the persons who have acquired those rights for political purposes really acquired them by a fair transaction?—I have some difficulty in understanding the expression "by a fair transaction."

7898. That it is a real purchase, such as is conducted in the ordinary course of transactions?—No, certainly, it is not a transaction conducted as in ordinary business; in ordinary business there are two agents, who have conflicting and opposing interests, making a bargain; here there is one agent, or, in point of form, two agents, but in truth only one agent; the necessity of two agents is for the purpose of giving delivery; they are not contesting agents, they are persons who understand each other perfectly, acting together for the purpose of carrying into execution the creation of a vote. In a real transaction you have an agent for the purchaser and another for the seller, and they are anxious to make the best bargain they can for their respective employers; then they have, invariably, as part of the title, a search for incumbrances; but so far as I have had an opportunity of seeing, that has not been done in the cases I allude to; there is no necessity, when the object is to create a vote, for a search for incumbrances, for, according to the decisions of the sheriffs, it is not at all necessary they should deduct the incumbrance.

7899. Sir William Rae.] Does not the Act of Parliament say that you need not deduct the incumbrance?—I think it may be construed to that effect, and I think that is the proper construction of it; it says that it shall not be competent to vote on heritable debts; but the only matter stated to be deducted is the feu-duties, and they have construed that you shall not vote on heritable debts.

7900. And you think that construction right?—I do.

7901. Chairman.] Do you think that, in these cases, the party professing to be the purchaser is really the purchaser, and that the party who makes the conveyance really does part with the property as he professes to do?—I should say that, in some cases, they do part with the property, but in the great majority of cases (that is, however, only a general impression) I think there is no real intention of conveying away the property, except for the vote.

7902. Sir William Rae.] Do you state that from personal knowledge, or from suspicion?—It is mere impression, gathered from what I have seen taking place, and the general character of the cases.

7903. Lord Advocate.] What are the circumstances which lead you to that conclusion?—In addition to the circumstances I have stated, I think it is very unlikely, if they were contemplating a real conveyance of the property, that they would convey it to such a great number of individuals; united evidently for a particular purpose, the acquisition of political franchise; I think, that if they were intending it for a *bonâ fide* transaction, they would make arrangements for the purpose of preventing that inextricable confusion which must arise (in the case of conveyances of the fee) by the succession to the properties, which must be split to a great extent; and I have seen instances in which gentlemen have stated that their fathers had conveyed their policies around their houses, and that they considered that they were the independent proprietors, and had a right to those policies, and that the father actually intended to convey away the policy while he was residing in the house, and actually occupying the policy.

7904. By policy, you mean the pleasure-grounds around?—Yes.

7905. Chairman.] In addition to these life-rents, are there any other rights created, since the Reform Bill, which you consider of a novel character?—I consider joint proprietorships, to a certain extent, of a novel character. The Committee will understand me not to say that it is against the law to create joint proprietorships, but, until 1832, we have had, comparatively speaking, very few joint proprietorships. I never saw joint proprietorships where there were individuals gathered together from different parts of the country, perfect strangers very often to each other, and who were united together only by one single bond of union, viz. political sentiment. I have also in those novel cases invariably

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found that they are either all Whigs or all Tories; you never find that there is a man of different principle in any one of the batches; that would be exceedingly dangerous, because, if there was, that man could immediately bring an action in the courts to have the whole sold or divided.

7906. Did you ever know a case before the passing of the Reform Bill of a joint purchase being held by individuals who were not embarked together in some business, or who had not succeeded to it?—To answer this question, I must explain that there are various kinds of joint proprietorships; there is the case of heirs portioners, where daughters succeed equally in right of their father; partnership concerns, where parties acquire houses, either for carrying on their business or for other purposes; cases of tontines; then there have been cases, but they are not very common, of extensive landed purchases, where people have purchased lands to the extent perhaps of 20, 30 or 40 thousand pounds, for the purpose of selling those lands again as a commercial speculation; there are also instances of inns having been built by joint stock. I may give as one, the Waterloo Hotel at Edinburgh. I had occasion to argue a case the other day in the House of Lords, from which I found that there were a great number of the Lords of Session and the members of the Bar proprietors. There are also a number of joint proprietors in the British Hotel; but excepting those cases which were real cases, I am not aware of any at this moment.

7907. Have any cases of joint tenancy, except for political purposes, come under your observation?—Very few, except for political purposes; there were none, so far as I recollect, in Peebles-shire; in Stirlingshire, it is impressed upon my mind that there were several cases; indeed, on recollection, I am quite confident of that, from a very curious circumstance which occurred; I am certain there must have been a good number there, but I have not my memorials, and I really am not able to charge my memory very distinctly with the details.

7908. Have a great many qualifications been acquired by means of these new rights in Peebles-shire?—I think there have been admitted by means of these joint life-rents above 100, I should say about 110; indeed, the whole business of the court was occupied with those cases.

7909. *Sir William Rae.*] That embraces the votes made on both sides?—Yes.

7910. *Chairman.*] Do you consider those cases objectionable under the Reform Act?—My opinion is, that if you confine yourself within the four corners of the Reform Act, and look to the particular words, they are admissible; but I think, if you look to the constitutional history of the law of elections, from the time of the Revolution downwards, you will find that it has been the great object of Parliament, particularly in England, and also in Scotland, to prevent the multiplication of votes by the splitting of properties and the acquiring of properties for the purpose of multiplying votes; I am therefore strongly inclined to hold, that, taking that principle into consideration, and taking also into consideration that those joint life-rents and joint proprietorships, and even simple life-rents, were either unknown or exceedingly uncommon, the Legislature (but of course those who are members of it must know best) could not have contemplated that those classes of cases should be legal under the Reform Act.

7911. You stated that it has been a great object of Parliament, particularly in England, and also in Scotland, to prevent splitting properties for the purpose of making votes; have you any authority for that?—I think there is authority, both in England and in Scotland; and on this matter, which is a constitutional question, we are in the habit of referring to the law of England; and though it is not conclusive authority, it receives great respect. I think there are a series of statutes upon that subject, from which I can draw no other deduction than that it is a constitutional principle, that you shall not convey or split or divide properties for the purpose of creating or multiplying votes. Thus I find an Act of Parliament, 7 & 8 William III., chap. 25, passed in the year 1696, intitled, "An Act for the further regulating Elections of Members to serve in Parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such Members;" after a provision in section 7, for the case of a trustee and mortgagee, there are these words, "And that all conveyances of any messuages, lands, tenements or hereditaments, in any county, city, borough, town corporate, port or place, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of Members to serve in Parliament, are hereby

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hereby declared to be void and of none effect, and that no more than one single voice shall be admitted to one and the same house or tenement ' This statute is followed by the Act 10 Anne, cap. 23, in the year 1711, intituled, "An Act for the more effectual preventing fraudulent conveyances in order to multiply votes for electing knights of shires to serve in Parliament." After a recital of the above Act there is this provision: "And whereas (notwithstanding this provision to the contrary) many fraudulent and scandalous practices have been used of late to create and multiply votes at the election of knights of the shire to serve in Parliament, to the great abuse of the ancient law and custom of that part of Great Britain called England, to the great injury of those persons who have just right to elect, and in prejudice of the freedom of such elections; therefore, for the more effectual preventing of such undue practices, be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That all estates and conveyances whatsoever made to any person or persons in any fraudulent or collusive manner, on purpose to qualify him or them to give his or their vote or votes at such elections of knights of the shire (subject, nevertheless, to conditions or agreements to defeat or determine such estate, or to re-convey the same) shall be deemed and taken against those persons who executed the same as free and absolute, and be holden and enjoyed by all and every such person or persons to whom such conveyance shall be made as aforesaid, freely and absolutely acquitted, exonerated and discharged of and from all manner of trusts, conditions, clauses of re-entry, powers of revocation, provisoes of redemption or other defeazances whatsoever between or with the said parties, or any other person or persons in trust for them, and that all bonds, covenants, collateral or other securities, contracts or agreements between or with the said parties, or any other person or persons in trust for them, or any of them, for the redeeming, revoking or defeating such estate or estates, or for the restoring or re-conveying thereof, or any part thereof, to any person or persons who made or executed such conveyance, or to any other person or persons in trust for them or any of them shall be null and void, to all intents and purposes whatsoever; and that every person who shall make and execute such conveyance or conveyances as aforesaid, or being privy to such purpose, shall devise or prepare the same, and every person who by colour thereof shall give any vote at any election of any knight or knights of a shire to serve in Parliament shall for every such conveyance so made, or vote so created or given, forfeit the sum of 40 *l.* to any person who shall sue for the same, to be recovered," and so forth. Then there is another statute, the 12th of Anne, chapter 5, which it is not necessary to read; after which there is the Act of 13 George II., chapter 20, in the year 1740, which provides, "And whereas it is reasonable that provision should likewise be made to prevent any fraudulent conveyances of lands and tenements, in order to multiply votes for electing Members to serve in Parliament for such cities and towns as are counties of themselves, wherein persons have a right to vote for electing such Members for or in respect of lands, tenements or hereditaments of the yearly value of forty shillings; be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that from and after the 25th day of March 1740 the said provisions contained in the said in part recited Act, made in the 10th year of the reign of Queen Anne, for preventing fraudulent conveyances, in order to multiply votes for electing knights for the shires, and in the said Act made in the next session of Parliament shall be extended and construed to extend to such lands or tenements." There is also another Act, the Act of 53 George III., chap. 49, in the year 1813, which relates to wills, by which it is enacted, "That all devises by will, made in such cases and for such purposes as by the said Act are hereinbefore described, are and shall be taken to be conveyances within the true intent and meaning of the said Act." These are the statutes to which I refer as to the law of England. Then there is as to Scotland a resolution with regard to the Act of 1681, which I read from Mr. Connell's book on Election Laws, page 56, in a foot note, "In the contested election for the county of Dumbarton, in 1724, the Committee of Privileges and Elections came to the following resolution, which was approved of by the House, 'That it is the opinion of this Committee that any conveyance of undivided shares of the superiority of any lands in the shire of Dumbarton, in order to multiply votes or split an interest in such superiority, amongst several persons, with

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a view to enable them to vote, is contrary to the Act of Parliament made in Scotland in 1681, intituled, 'Act concerning the Election of Commissioners for Shires.' Then there is the Act of 12 Queen Anne, chap. 6, intituled, "An Act for the better regulating the elections of Members to serve in Parliament for that part of Great Britain called Scotland," which has this recital, "Whereas of late several conveyances of estates have been made in trust or redeemable for elusory sums no ways adequate to the true value of the lands, on purpose to create and multiply votes in elections of Members to serve in Parliament for that part of Great Britain called Scotland, contrary to the true intent and meaning of the laws in that behalf;" and there are provisions made for preventing that.

7912. Mr. *Ferguson*.] Was it in the face of these Acts of Parliament, the brown paper votes, as they are called, were created in Scotland?—Yes; those English Acts are not of course authority in Scotland; I am stating those merely as illustrative of constitutional law.

7913. *Chairman*.] Independently of the authorities you have cited, do you consider that under the law of Scotland the splitting properties into joint properties and life-rents is an objectionable proceeding, or that it is otherwise discountenanced by law?—I cannot say, as a lawyer, that it is incompetent to do it; but perhaps I do not understand the question.

7914. Is the law of Scotland generally favourable to joint properties?—I should say not, because it is quite competent for any person, who is in the position in which these parties are, to bring an action before the Court of Session to have it divided or sold; that is quite competent; I had recently an instance in which as counsel I took an objection that under the Reform Act this was now incompetent; but the plea was repelled.

7915. Mr. *Ferguson*.] If there are difficulties in the way of subdividing property, how is the property to be represented?—It is for the Legislature to determine how the property is to be represented; but if it is property alone which is to be represented, you will require to make a very great alteration in the law of Scotland. You would require to disentail all the estates in Scotland; you must allow all the entailed proprietors to subdivide their property in the same way. Besides in Stirlingshire there is a great extent of property held by the Carron Company; and it has been held that it cannot be represented by the partners.

7916. Supposing you yourself the proprietor of large and extensive buildings in Edinburgh, do you not think that that property should be represented in the election of Members of Parliament, acting on the principle of the Reform Bill?—Certainly; but if the question has reference to splitting it for the creation of votes, then, looking at the great constitutional principle enforced by these Acts of Parliament, and that it is not merely property, but, as we are told in the Reform Act, the intelligence of the people, (and they must be taken together) which is to be represented, I do not think it is legal or proper that property should be divided in that manner.

7917. Provided that the conveyance of that property be a *bonâ fide* conveyance; that the persons acquiring an interest really do require a *bonâ fide* interest in that property, what is your opinion?—If the object is the multiplication of votes, (which is to be judged of from all the circumstances,) I think it is not legal and proper; but if it be a transaction without reference to this as the object, and by which there is a sale of property to several persons, to be converted into an inn, (for instance) I can see no legal or constitutional objection to that.

7918. Sir *William Rae*.] Do you speak of what is not legal or what ought not to be legal?—I have a very strong impression that it is illegal. When I began to attend the Registration Courts, I understood the question to be settled by decisions; but if I were allowed to argue this case on constitutional principles, I have great doubts whether those votes are legal at all. I intimated that opinion at the Peebles-shire Appeal Court, but admitted that the question was concluded in consequence of the decisions, that nothing but the Legislature could set it right, and therefore I did not press it upon the court.

7918*. Sir *Thomas Fremantle*.] They were not illegal before the Reform Act?—Before the Reform Act there was nothing of the kind except the old life-rent qualifications.

7919. Mr. *Maule*.] You have said that, Sir Thomas Carmichael's estate being entailed, he could not split it up or any part of it, and make life-rent votes upon it; in addition to all the other evils which attend the system, does it not give unentailed property an advantage in representation over entailed property, which could
not

not be contemplated by any of the Acts for the purpose of distributing equally the representation of the country?—I should think so, most undoubtedly; and, from all the information I can obtain, I should think that the entailed property of Scotland is very nearly one-half the property of Scotland. I know in some counties it greatly preponderates. In the districts of Carrick and Kyle, in Ayrshire, I believe it greatly preponderates; I believe also in Peebles-shire it preponderates considerably; and I have been told that in Argyleshire it preponderates very considerably.

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7920. Then, supposing a county to consist of a larger proportion of entailed than of unentailed property, it is quite competent for the possessors of unentailed property, being the possessors of the smaller portion of the property, to create so great a number of votes upon that property as completely to swamp and overrule the votes on the entailed property?—Yes; and in Stirlingshire the Carron Company have very extensive property; but it was decided, after very full argument, that none of the proprietors of the Carron Company can be inrolled in respect of any part of this land; that the property is in the corporation, and that the parties who have the real and actual right in the property have no title whatever to be put upon the roll.

7921. *Lord Advocate.*] Have not votes been allowed in some counties that were created on entailed properties?—That has not fallen under my knowledge; I have been under a distinct impression that they were quite incompetent; I have heard from some gentlemen that attempts have been made, but I think they have been unsuccessful in the greatest number of instances; I have an impression that there have been some cases where life-rents were created on an entailed property, but that there was something of an arrangement by which they were allowed to get on without discussion; I think that a lawyer who would advise any entailed proprietor with the usual clauses to put such votes on his estate, would be advising that proprietor to run considerable risk.

7922. Supposing the entailed proprietor was sure that his friend would not bring an irritancy against him, on what grounds do you apprehend they would be invalid?—It has been a question very much discussed in the Registration Court, whether it would be competent to the objector to object on any matter in the title of the party granting the deed which would prevent his doing it. The question was raised in regard to the splitting of leases, where there was a prohibition against assigning, and the decisions have not been uniform. If parties were all so perfectly well arranged, as is contemplated by the question, and there were to be no objection taken, I conceive the sheriff would not be entitled to look beyond the claim and the conveyance.

7923. *Mr. Ferguson.*] Have not almost universally proprietors of entailed estates a power of granting feus for life?—They have, under the Montgomery Act, a power of granting leases (not feus) to a limited extent.

7924. Is it not the fact that feus granted for 99 or 63 years confer the elective franchise?—Leases do under the present Act of Parliament.

7925. Therefore, under those circumstances, the entailed proprietors are on a footing with the proprietors of unentailed estates?—No, they could not make the sort of cases we have here; they might give an individual lease; I think it would be very difficult to make these votes in the way in which fee-simple proprietors can make them.

7926. *Sir Thomas Fremantle.*] You stated the case of a conveyance of Mr. Aitcheson to his seven sons, he retaining the fee-simple; if one of the sons died, you say he would then come into the son's possession; if he succeeded to one or more of his sons, what inconvenience would arise?—I illustrated that by stating, that, if I wanted to remove the father I must have the consent of the father; if the father ran in arrear of rent, I must have his concurrence to do, what we call in the law of Scotland, diligence to sequester his effects, that is, to recover the rent.

7927. All the joint tenants must concur in that proceeding?—If they are joint proprietors, all those who have a right or interest in it must concur.

7928. Is it necessary for the father, or the remainder-man as we should call him, to concur, in case the tenant does not pay his rent?—Certainly, he must concur; there may be cases where a party has made arrangements with a particular individual, by which he may be prevented from objecting to the individual recovering, but then it will be seen what a very curious result would arise if five sons died, and the recovery went not to the whole rent, but two-

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sevenths of the rent; now, how to work upon that is what, as a lawyer, I should have great difficulty in advising; I could not see my way out of it.

7929. *Mr. Baring.*] Did you not say that, in the case of joint properties, any one of the joint owners might force a sale of the property?—Yes; or a division.

7930. Could any one of the joint life-renters force a sale or a division; because, if so, that would afford a remedy?—I do not see, in point of principle, why he should not; but no such case has occurred, for no such case existed, so far as I know, till after 1832.

7931. You stated the difficulty which would arise from such a tenant being himself one of the joint life-renters under whom he rented; would not the existence of the law, which enabled any one of the joint life-renters to compel a sale or division of the property, afford a remedy against the inconvenience you anticipate, and enable the remaining joint life-renters to escape from a position in which they could not enforce their rights?—I think not; if they were to enforce a sale, they might no doubt sell the estate to a single individual, and that single individual might exercise the right, and might proceed without the difficulties I have mentioned; but if it is to proceed by means of a division, you split the farm into seven parts, and you are just in the same position in which you were formerly, because the tenant is no party to those proceedings; and as his rent is due to them all *pro indiviso*, he may object to pay it except on a discharge by them all.

7932. Is it competent for any one of the sons who are life-renters to sell his interest?—I should think so certainly.

7933. Supposing the tenant was to buy one interest; in that case, would not the remaining joint life-tenants be placed in the very same anomalous position in which they would be placed by the father's succession to his son?—Precisely.

7934. Would it not be as necessary for the law to interfere to prevent the anomaly which might arise from a tenant's purchasing the interest of one of the joint life-renters under whom he rented, as to prevent the father from granting a joint life-rent to his sons, under the apprehension that he might, by succeeding his son upon his son's decease, be placed in the double capacity of joint life-renter and tenant at the same time?—The case put is just another mode of stating the anomalous nature of the right. I understand the question to refer to this, whether precisely the same anomaly would not arise in the case of sale as in the case of succession; and my answer is, that this is another illustration of the anomalous nature of the right.

7935. *Mr. Ferguson.*] In the course of your experience in the Registration Courts, has it been customary to call for proof, in the case of a proprietor and feu-holder, as to the amount of the beneficial interest, or only proof that the property is worth 10*l.* a year?—It has not been usual to call for proof that they have a beneficial interest; if by that is meant clear of all incumbrances; certainly we never inquire into that matter at all.

Mercurii, 12^o die Aprilis, 1837.

MEMBERS PRESENT.

Sir William Rae.
The Lord Advocate.
Mr. Fox Maule.
Mr. Bingham Baring.

Mr. Divett.
Sir Hugh Campbell.
Mr. Edward Buller.
Mr. Walter Campbell.

EDWARD HORSMAN, ESQUIRE, IN THE CHAIR.

Patrick Shaw, Esquire, called in; and further Examined.

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7936. *Chairman.*] REGARDING the new sorts of title, you spoke of yesterday, which are acquiring in Scotland since the passing of the Reform Bill, you told us some peculiarities they had; did you tell us them all?—I think I told you in part what occurred to my mind at that time. The class of cases which

which I have been most familiar with, are either single life-renters or joint life-renters; and in contradistinction to real transactions, I observed these peculiarities; first, that the grantor of the life-rent, and all those to whom the rights were granted, were invariably of the same opinion in politics; secondly, that the agents employed (nominally there were generally two, in point of substance, there was one), were also of the same political sentiments with the grantor and grantees; thirdly, that the witnesses who were employed to attend at the formality of intimation, were also of the same political sentiments; and generally, although not invariably, the tenant over whose farm the life-rent was granted was likewise of the same political sentiments. These observations apply to all the cases, whether they were tories or whigs.

7937. Are the agents the ordinary agents of the persons?—So far as I have had the opportunity of knowing, they are not the ordinary agents; and certainly in Peebles-shire they were not the ordinary private agents.

7938. At what time, generally, are these qualifications made out?—The deeds almost invariably bear date about the 29th or 30th of January; they may, some of them, go back to the 20th, but very seldom earlier than the 20th, so as to come just within the six months, to enable the parties to claim.

7939. What was the object of employing agents to make out these deeds who were of the same political sentiments?—The object is, that in employing as agents persons who are of the same political sentiments with the employers, there is not likely to be any disclosure of the transaction; it is considered good management and good tactics to have the matter as much concealed as possible; and generally it is only by accident or anxious investigation that any discovery is made as to the nature of the transaction, and we have generally to make ourselves acquainted with it by the production of the deeds, which production is made in court when the case is called; whenever the case is called, the one party says to the other, “Show me your deeds;” and from them we are enabled to get a general insight into the nature of the case, and if we have any previous vague information, we are in some degree capable of making that previous information bear on the case; but it is exceedingly difficult to get at its true nature.

7940. Are there not valuers employed, who settle the value of the property?—The parties bring forward valuers; and these valuers are generally partisans on each side; if it is the case of a conservative, he brings conservative valuers; and if it is the case of a whig, he brings forward men of the same sentiments.

7941. Have you observed any distinction in cases that are put in in the Registration Courts, that in some of them agents are employed, whose political sentiments are not the same as those of the claimants?—I never saw a case in which the agents in these political cases were of different political sentiments from the employer. I am not aware that I ever saw an agent who was a tory employed for a whig, with one exception. It happened, with regard to myself, that the gentleman who is my private agent, is a conservative, and I employed him to purchase the subject in Mid-Lothian on which I am inrolled.

7942. Is it not a common circumstance, in Scotland, that a whig proprietor should have a tory writer for his private agent?—In regard to real transactions, that is not uncommon.

7943. Is it a common circumstance?—It is not an uncommon circumstance that one gentleman of different political sentiments employs another on real transactions.

7944. Then in those cases where that occurs, the phrase you used was that it occurred in *bonâ fide* cases?—In ordinary transactions they do so; but I am not aware that, with reference to transactions for acquiring the political franchise, they ever employ an agent of different sentiments; they rather leave their ordinary agent and go to another.

7945. You have known that frequently occur?—Yes.

7946. Sir William Rae.] You said that was the uniform practice?—I said as far as my observation enabled me to judge, that when the object was to acquire the political franchise, a gentleman who would employ an agent of opposite opinions to his own, in the ordinary transactions, would go to another agent.

7947. You said you did not remember any instance to the contrary?—I am not aware of any instance to the contrary, except in my own particular instance.

7948. Chairman.] You stated, generally the grantors and grantees employ the same agent in these transactions?—Yes.

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7949. Do you take that from your experience in Peebles-shire?—Yes, and also in Mid Lothian and Stirlingshire.

7950. In Peebles-shire, will you describe how it occurred?—In Peebles-shire, Mr. James Robertson, writer to the signet, was agent in almost all those cases of life-rents; certainly in the cases of Sir John Hay and Mr. Mackenzie of Portmore; and he acted both for the grantors and for the grantees in Edinburgh. After the deeds were executed, it appeared from the evidence that was produced in the Peebles-shire Registration Court, that in order to satisfy the law as to delivery, and for the purpose of giving intimation to the tenants, he wrote a letter to Mr. Duncan Douglas, procurator-fiscal for the county, and writer in Peebles, requesting him to act for the life-renters and to give intimation. Mr. Douglas, in this way, became agent for the life-renters, and I recollect putting the question to him, whether he ever had any personal communication with any or the greater number of these gentlemen or any correspondence with them, and he said he had not.

7951. Is Mr. Douglas agent for any body in the county of Peebles-shire in any way?—I understand he is Sir John Hay's private agent in Peebles-shire. Mr. Douglas then performed his duty, which was to go, accompanied by two witnesses, to the respective tenants over whose farms these life-rents were granted, and he gave intimation. He afterwards was adduced in the Registration Court as the leading witness in all the cases, with the exception, I think, of Mr. Beresford's cases; but, speaking generally, he was the leading witness, and gave testimony with regard to the mode in which the cases were managed by him, and with regard to the mode in which he levied the rents.

7952. What cases do you mean?—Joint life-rent cases, particularly those created by Sir John Hay and Mr. Mackenzie of Portmore; generally, he acted in them all.

7353. In Mr. Carmichael's cases?—Certainly not in those.

7954. Do you mean in all the cases brought on by the conservative party?—Yes, I mean the joint life-rent cases; I cannot be perfectly accurate that he was agent and witness in them all, without looking to my notes.

7955. You said in all the life-rent cases; do you mean in all the life-rent cases, or those put on by one party?—One party, undoubtedly.

7956. By the conservative party?—Yes; the same plan was followed on the liberal side, with the exception which I shall mention. Mr. George Rutherford, writer to the signet, who is of the same political sentiments as Mr. Carmichael, acted for him and his life-renters, just in the same way as Mr. Robertson acted in Edinburgh for Sir John Hay and his life-renters. Then there was a Mr. Fotheringham, a writer in Peebles, who had charge of the country department in the same way as Mr. Douglas had, with this difference, that there was no necessity for intimation, because, following the advice I yesterday stated I had given, infetment was taken, thereby rendering intimation unnecessary.

7957. *Sir William Rae.*] What case is that?—It was the case over the estate of Kilbucho, the property the name of which I yesterday could not recollect.

7958. *Chairman.*] In those cases where property was conveyed by these gentlemen, life-rent cases, what evidence was adduced as to the receipt of the rents; did that appear to have been a real transaction?—In general, there were produced the receipts; and having received some vague information that there was something peculiar with regard to some of the cases, I was under the necessity of putting Mr. Douglas under a very severe cross-examination in the great class of cases; but it was only in two cases that I discovered any thing peculiar.

7959. What were those cases?—There were certain claims put in by life-renters on part of Sir John Hay's property, which property consisted in part of houses; those houses were tenanted by old servants of Sir John's who had got leases of them during their lives free of any rent. I was somewhat surprised, having got this information, on seeing a receipt produced for the rent, a receipt granted in favour of those tenants as having paid the rent, and, after a long cross-examination of Mr. Douglas, I ascertained this to be the fact—the deeds were granted as usual towards the end of January, and it would appear that a difficulty had presented itself to the minds of Sir John Hay's advisers as to whether these houses could be taken into consideration in estimating the value of the property before the Registration Court. Sir John Hay gave a letter of obligation, in February, to the life-renters, binding himself to see certain rents paid for these houses; Mr. Douglas at the time at which the rents were payable sent for the tenant,

tenant, and he put into his hands a sum of money corresponding to the amount of the rent which Sir John Hay had by this letter agreed to give the tenant; Mr. Douglas being in one room then directed the tenant to go into the adjoining room and there to pay his rent to a person who was in attendance; he paid his rent to that person, who was a subordinate agent to Mr. Douglas, whereupon the tenant received from this subordinate agent a receipt, which was the receipt produced in court; and then, at a subsequent period, this subordinate agent, who had received the money so given by Mr. Douglas to the tenant, returned it Mr. Douglas. I took an objection in that case on two grounds; first, I stated that I had established a case which was tainted with fraud, and was entitled to have it rejected on that ground, and secondly, that at all events the value could not be taken into consideration at all. The Sheriff rejected the claimants in that case, and I presume he did so in respect, not of the first plea, but of the second; because I proved in another case the same circumstances, but the rent to which the objection applied was not sufficient to diminish the value beyond the legal amount, and these other parties were admitted to the roll.

7960. That subordinate agent, was he a political agent also?—Yes.

7961. Who was he?—William Lambert. The cases that were rejected were Charles Nairn, esq., w.s., Hugh Hay Rose, lieutenant-colonel in the Portuguese service, and Archibald Smith, esq., advocate. The cases that were admitted where the same thing occurred, were James Rose, esq., w.s., James Erskine, esq., of Shieldfield, and James Hamilton, Dundas. There may have been other individuals in that batch, but I am not quite sure.

7962. Mr. *Bingham Baring*.] You have stated Sir John Hay granted certain life-rents to parties; and that there were certain tenants, old servants of his, when he disposed of a certain portion of his interest in that land, and that it was necessary that those tenants should either pay the rent to their new masters themselves, or that he, to indemnify them for the change of master under whom they held, should pay the rent for them?—These tenants, in respect of the leases which had been granted to them by Sir John Hay, sat rent-free all their lives; that was the nature of their title; that of course was a good defence for them against any claim by these parties, and being so understood, Sir John Hay granted this letter of obligation to see these life-renters paid this sum of money, and then the agent employed in the transaction had recourse to that mode of paying the rent which I have explained.

7963. Were those leases ever produced?—I don't know that there were written leases, but it was proved before the Court by Mr. Douglas, that they sat rent-free.

3965. Sir *William Rae*.] Did it appear they were entitled to sit rent-free for life?—That I think was so stated in the evidence; it was never doubted, or disputed; at all events they were rent-free for the current year.

7966. *Chairman*.] To whom was Sir John Hay's letter of obligation given of 10*l.* a year of rent for those houses?—My impression is, that the letter was in the possession of Mr. Douglas, and that it must have been a letter for the benefit of the life-renters, and that he, holding it and representing himself as their agent, held it for their behoof. The only note I have is, "Mr. Douglas received letter 10th, February, from Mr. Robertson, saying, Sir John Hay would pay rent for tenants to disponees, such tenants then sitting rent-free from Martinmas last."

7967. Sir *William Rae*.] Was there any doubt that the houses were worth 10*l.* a year, supposing that they had been let?—No evidence was stated on that subject, because we hold, that if it be a rented subject, the rent must govern; and I rather think that the counsel for the conservative party were not prepared for this disclosure, and had no evidence as to value, but relied on the receipt.

7968. Suppose a life-rent was granted to an individual of certain subjects, possessed by other people of full value, might not a qualification be constituted on a grant of that description?—That is a point I think they might have urged, on the ground that evidence of its actual value should be admissible, seeing it was possessed free of rent, and no rent could be got out of it.

7969. Might not a subject of actual value possessed free of rent afford a qualification?—If you ask my opinion as a lawyer as to what I think on that point of law, I rather incline to think that in that case evidence would be admissible of what the actual value of the house is; but nothing of that kind was gone into.

7970. Mr. *Bingham Baring*.] You said that Sir John Hay granted life-rents
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Patrick Shaw, Esq. on this property, without receiving any rent, on behalf of certain old servants **who** were the tenants on the property, that he had engaged to those parties that **they** should remain rent-free during their lives, did he not in consequence of a change of owners become bound as a man of honour to pay the rent for these parties for whom he had entered into that engagement?—I do not know what he **might** think of it as a man of honour.

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7971. Had he not engaged that those tenants should remain rent-free during their lives?—It was so stated in the evidence; he conveyed the property to those life-renters, but I am not aware that there was any obligation in the deed to guarantee to them any specific rent.

7972. Were not those tenants bound to pay rent to these gentlemen?—Certainly not, in point of law.

7973. You said that they had no lease?—No written lease; I find, on looking into the notes, that Mr. Douglas stated that “the cause of witness knowing Marr’s setting rent-free was Sir John’s telling him so; Sir John ceased to be landlord when the deed was granted, and witness only then became factor.”

7974. *Sir William Rae.*] There was nothing to show that there was an obligation on the persons who acquired these rights to continue these houses rent-free to these tenants?—No.

7975. Those disponees were entitled to enforce payment of rent, or force the people to remove?—They might have given notice at the end of the currency of the lease to remove (on the supposition that it terminated when Sir John granted the life-rents); but undoubtedly, with reference to the question which was under the consideration of the court, the tenancy extended up to Whitsunday 1836, and consequently there was no rent payable up to that time. The court was held in the Autumn of 1836; no rent could be exacted from these persons till after that term, and the money was paid with reference to rent prior to Whitsunday 1836.

7976. *Chairman.*] Then the rent was paid before the regular term?—No, it was at the regular term of payment, if there could have been rent enforced; every thing appeared quite fair on the paper.

7977. Was the rent paid before it could have been enforced under the new proprietorship, to whom those persons became tenants?—The new proprietors could not have enforced payment of any rent until they removed the tenants, and put in new tenants, or made a new agreement with those persons, supposing always that their right terminated when Sir John granted those life-rents.

7978. In any other case of Sir John Hays, was there a peculiarity which struck you?—There was one case in which the parties seemed to know so little about the property, that they mistook the property altogether; they brought forward a tenant to prove the value of one subject, and, on turning to the deeds, they conveyed another and a different subject.

7979. What case was that?—It was the case, according to my recollection, of William Ogilvy, of Chesters; William Rutherford, writer, in Galashiels; and John Scotland, in Glen Douglas. I think the name of the property was Loaningdales; I think there were also others, but I do not carry these details in my mind.

7980. Were there any other peculiarities?—I was somewhat struck with the peculiar mode in which the matter was arranged in paying the rents, in the case of Mr. Mackenzie, of Portmore. The peculiarity was this,—I speak from the testimony given at the Registration Court,—Mr. Douglas gave notice to the tenant; at all events the tenant was required to attend at the office, in Edinburgh, of the agent of Mr. Mackenzie, of Portmore. Mr. Douglas had printed circulars prepared, notifying to all these life-renters to attend at the chambers of Mr. Stewart, who is, I think, Deputy Presenter of Signatures in the Exchequer, to receive payment of their rents. Mr. Douglas went to the office of Mr. M’Kenzie’s agent, received the shares of the rents corresponding to the number of life-renters, and then went to the meeting of those life-renters, at the Exchequer-chambers, and to those that he found there he paid their rents according to their respective proportions; and where he did not find them, he went round and distributed their money. It struck me as somewhat peculiar, that there should be printed notices sent to landlords to come and receive their rents; that is not usual in real transactions; landlords have generally some difficulty in receiving their rents.

7981. *Sir William Rae.*] Was any thing founded on that before the sheriff?—On that, and a great number of circumstances, I endeavoured to make out my proposition of fictitious.

7982. Mr.

7982. Mr *Bingham Baring*.] What do you mean by "fictitious"?—That it was not a real transaction. *Patrick Shaw, Esq.*

7983. Do you mean to say they did not possess the property?—If you mean that they were not in the legal occupation of it, I must say they were in the legal occupation of it; but what I had in view to impress on the mind of the court, from the whole circumstances of the case, was, that this was not a true *bond fide* transaction; but the court held it was, and admitted the claimants.

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7984. These parties were life-renters of the value of 10*l*.?—Undoubtedly they had the personal right as such; they had no real right in the lands, which in a competition of creditors, or with singular successors, who had taken infestment, would be of any avail at all, except as giving a claim on the personal estate. By the word "real," I mean real in the legal signification, the *jus in re*.

7985. Sir *William Rae*.] If infestment had followed, would that have helped the case of the life-renters?—That would have given them the *jus in re*.

7986. *Chairman*.] Did you investigate them all?—Not all; we investigated the cases of the Rev. John Isaac Beresford.

7987. Was there any peculiarity in them?—Yes, I thought that there was such a peculiarity as led me to argue the cases rather anxiously to the sheriff, to the effect of striking them off. It appeared that this gentleman had gone to Ireland some time towards the end of the year 1835; that while in Ireland his agent, the same Mr. Stewart whom I have already mentioned, prepared, I have no doubt by his authority, a deed, conveying the life-rent of part of his estate to William Ponsonby Barker, of Kilcooley Abbey, in Tipperary, and others; and these life-renters being all in Ireland, the deed was sent to Ireland and returned executed, as upon the 21st of January; the deed bore date the 21st of January, and must have been executed in Ireland on the 21st of January. I also ascertained, from the examination of Mr. Stewart, that he, being factor for the grantor of these deeds, entered into a transaction for letting the lands on the 20th of January; and it appeared to me, that as the deed had been executed on the 21st of January in Ireland, and as there must necessarily have been some previous arrangement for the sale or transfer of this before the execution of the formal deed, the circumstance of the factor of the grantor of these deeds entering into a lease of the subjects on the 20th of January, was real evidence that the premises still remained the property of the grantor of the deed. There was also something peculiar in the person who acted as the agent for those life-renters; he was a clerk in the Exchequer Chambers, and had never been engaged in any matter of this kind before, and had never seen or heard of these gentlemen; and when I put the letter, which was written by one of them, giving authority, into his hands, he could not swear to the identity of the hand writing; and he stated that he had never seen and had no communication with them, and that the only authority he had to act as agent in the transaction was that letter giving authority, the handwriting of which letter he could not identify.

7988. How did he receive that letter?—By the Post Office; it appeared from Mr. Stewart's evidence, that he had (I presume by letter) suggested that this gentleman should act as agent in the transaction.

7989. By whom was this letter signed, desiring him to act as agent?—It was signed by one or more of these life-renters, I forget which; I put it to the clerk, "Can you swear whether that is the handwriting of the person?" and he could not.

7990. Were any of those persons themselves examined?—We could not examine them; it was utterly impossible; they resided in Ireland, with the exception of the gamekeeper; there was a gamekeeper included in the disposition.

7991. Whose gamekeeper was he?—The Rev. Mr. Beresford's.

7992. The *Lord Advocate*.] Is Mr. Beresford a clergyman?—An Irish clergyman.

7993. *Chairman*.] That case you considered not a real transaction, and on that ground investigated it?—I had no doubt, in my own mind, that it was not a real transaction, in the proper acceptation of the term.

7994. Sir *William Rae*.] What was the result of those cases?—They were admitted by the sheriff, after expressing some difficulty.

7995. Did it appear to you, legally, that that decision was consistent with the law?—I should have differed with the sheriff.

7996. Did you, after this, investigate all the other cases of the same kind?—No, we did not.

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7997. *Chairman.*] What was the reason why you did not investigate the other cases?—The parties got tired of investigating all these numerous cases. I was bound to exercise my discretion as counsel; I took upon me to have the cases just put in form for appealing, and for taking further measures if necessary; but when we got to the Appeal Court, after having one or two arguments, the parties compromised.

7998. *Mr. Fox Maule.*] Was there any special reason for compromising the other cases; did it arise from wishing to save expense on each side, or was it unnecessary, after hearing these one or two cases, to appeal any other further case?—For both reasons; first, that after certain opinions had been announced by the judges, it would have been almost factious to have persevered in going through all the cases; and, secondly, I considered I was bound to guard against the enormous expense to the parties and to the public.

7999. *Chairman.*] Is this system going on to a great extent now, as far as your experience goes?—I cannot say from my own experience, because, since 1836, I have had no communication on the subject; it is quite capable of indefinite extension.

8001. *Sir William Rae.*] The cases you have alluded to are all on one side of politics?—I stated yesterday, that I had advised a large class of cases on the opposite side of politics.

8002. What were those cases?—Those which Mr. Carmichael made on the estate of Kilbucho.

8003. Did you give any advice to purchase that estate?—I did not advise the purchase of any property; I was not aware at that time that Sir Thomas Carmichael could not create any in consequence of his estate being entailed.

8004. The property being purchased, were not certain life-rents created on it, and how many?—There were 21 on Kilbucho.

8005. Who were they?—Walter Adam, M.D., in Edinburgh; James Anderson, leather merchant, Edinburgh; John Clarke Brodie, Edinburgh; James Crawford, advocate, Edinburgh; James Butler, merchant, Edinburgh; Peter Crooks, w. s., Edinburgh; John Black Gracie, w. s., Edinburgh; Alexander Jameson, merchant, Edinburgh; James Bruce Jardine, younger, of Hallside, merchant, Glasgow; Peter Lamond, brewer, Edinburgh; John Lees, tobacconist, Edinburgh; Augustus Maitland, w. s., Edinburgh; Thomas Mansfield, accountant, Edinburgh; George Meikle, merchant, Edinburgh; Andrew Miller, merchant, Edinburgh; Adam Paterson, w. s., Edinburgh; Ralph Richardson, tobacconist, Edinburgh; John Riddle Stodart, w. s., Edinburgh; Robert Thompson, merchant, Edinburgh; William Wemyss, residing in Salisbury-road, Edinburgh; James Gibson Thomson, wine-merchant, Edinburgh.

8007. None of those persons have any particular connexion with the county of Peebles?—That is a question I cannot answer.

8008. You know nothing of the nature of the transaction as connected with the purchase?—Not the slightest; that did not fall within my functions at all.

8009. What was the other case you was about to mention of Mr. Carmichael's?—There are six on that property.

8010. Do you know the name of the property?—I believe it is East Sands. The parties are, James T. Gibson Craig, w. s., Edinburgh; George Dalziel, w. s., Edinburgh; David Cormack, s. s. E., Edinburgh; Maurice Lothian, s. L., Edinburgh, and John Lothian, s. s. C., Edinburgh.

8011. *The Lord Advocate.*] Could you furnish us with a list of the persons and their designations enrolled on the other side?—Certainly, from the same sources of information communicated to me.

8012. On both sides?—Yes, I think I have given all on one side; I think there were 26 or 28 by Mr. Carmichael.

8013. *Sir William Rae.*] Is Mr. George Rutherford, the agent for Mr. Carmichael, one of the individuals who obtained a life-rent?—He obtained a single life-rent, he was not in any of the batches.

8014. From whom?—From Mr. Carmichael; that makes the 28 I mentioned. I may mention that I myself acquired a vote.

8015. What was the nature of it?—On learning the result of the case of the Aitchesons in the Appeal Court, I immediately gave notice to Mr. Rutherford, the agent for Mr. Carmichael, that I was resolved to purchase a vote to throw myself into the opposite balance; I had no intention of that kind except with reference to the existence of this system; I desired him to purchase me a property

perty that would yield me a sufficient sum to get me enrolled, and he purchased me a property that yields me somewhere about six or seven per cent. I am enrolled as proprietor of some houses, separate and unconnected with any other person. I followed exactly the same plan as I found Mr. Adam Anderson, the sheriff of Perthshire, had done on the opposite side of politics.

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8016. From whom did you purchase it?—I do not recollect the name of the person at this moment; I may mention that it has this peculiarity, that it is burthened to a certain extent with debt; there is a debt on it of 150*l.*, and the price that I was to pay in addition was 70*l.*; I expressed my desire rather to pay the whole 210*l.*, but it was represented to me, that it would be more expedient to allow the debt to remain, because the creditor was only to get four per cent., that is 6*l.* on the 150*l.*; that as the rent was 12*l.*, and if I paid the whole 210*l.* I should only get 12*l.*, being little more than five per cent.; whereas by allowing the debt to remain I should get 6*l.* for the 70*l.*, or nearly ten per cent.

8017. The price of it was 210*l.* and the debt on it was 150*l.*, and you paid, the difference?—Yes; and, acting on the same principle, of counteracting the effect of votes made on the conservative side, I obtained a vote in the county of Edinburgh.

8018. *Mr. Fox Maule.*] If it had not been from the state of the law in Scotland, that it was not necessary to deduct the debts chargeable on the property, and to prove a clear value of 10*l.*, you would not have been a voter on that property?—Certainly not on the property in Peebles-shire, but I should on the Edinburgh property; that is a very good purchase.

8019. *Chairman.*] Do you think the mode of creating votes which you have described has been attended with bad consequences?—I think it has been attended with bad consequences, and it is very likely to be attended with still worse consequences.

8020. What are they?—I think, in the first place, that it has a demoralizing effect; that the very circumstance of the necessity of administering so many oaths in cases of a political description is calculated very strongly to afford a temptation to state on oath that which is not true.

8021. Any further bad consequences?—I think it will tend to a breach of the peace on the first election; where this system exists it creates great irritability in the minds of the local constituency, by finding themselves overwhelmed by strangers who have no connexion with the county; I certainly should not at all be surprised, that at any ensuing election, where it is prevailing to a considerable extent, there should be breaches of the peace; and I think it would be the duty of every prudent sheriff to have, in consequence of this, and additional force.

8022. Do you know if that is the opinion of other persons acquainted with the local circumstances, as well as you yourself?—I have conversed with several persons on the subject, on both sides of politics, and they generally concurred in deprecating the system as a bad system in every view.

8023. Do you think it has any effect in producing false oaths?—I think it has that tendency decidedly. I think the circumstance of reference to oath being admitted in these courts also tends to that. Reference to oath is conclusive of the cause in favour of the party who swears, and we all know pretty well, at the bar, that a case is in very great peril when it is referred to a man's oath, unless he is a very honourable man indeed; and in regard to political matters there is a great excitement, and temptation to deviate from the strict line of truth.

8024. *Sir William Rae.*] Might not a less objectionable mode of proof be found out?—I think there might; I always regret the decision the sheriffs came to before I had any thing to do with the Registration Courts, that they did not think that they had power to take a judicial declaration, except in a particular class of cases.

8025. Do you think the power to take the judicial declaration would remove the evil which you have now stated?—It might in part.

8026. It would remove the evil of taking the oath?—I think it is very likely that in a great class of cases we would not put the oath after the judicial declaration; the judicial declaration may be founded on against the party making the declaration. It is different from reference to oath in this respect, that in the reference to oath you are bound to believe whatever a man states, although as a juryman you would disbelieve him, while in a judicial declaration every thing that he states may be argued against him, but cannot be argued in his favour.

8027. *Mr. Fox Maule.*] You have already paid considerable attention to this

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mode of creating votes since you have been in the practice of attending the Registration Courts; you have already made the Committee aware of your objection to the system; will you state to them generally what, in your view, are the best remedies for the system?—That is a subject that has passed very anxiously through my mind, and I have had great difficulty upon it; but I have come to the firm conviction, that if it is wished to put down this system, you can only do it by enforcing residence to a certain extent. I do not think I would require residence in all cases; I would be disposed to confine the remedy so that it should apply to those cases which we here assume to be evils; and I think if residence were enforced in all cases where the annual rent of the property did not exceed 50*l.* a year, that it would be a most important means of checking this system. I do not think that it would at all narrow the constituency or be prejudicial to proprietors in the counties, because there are very few people who have properties under 50*l.* who do not reside in the counties, for this reason, that on account of the expense of the managing of property under 50*l.*, most people who do not reside, or have no local connexion with the county, get quit of the property.

8028. *Sir William Rae.*] Do you apply that to life-rents?—Yes, I apply it both to joint proprietorships and life-rents; I also think residence should be enforced in cases of joint tenancies.

8029. What do you mean by residence?—I mean the same sort of residence as we have in boroughs, with this difference, that I do not think there should be any extension beyond the boundary of the county, as that tends to create confusion, and would tend to defeat the remedy which I suggest.

8030. In the case of the proprietors of large estates in two different counties, do you think it would be quite right that they should only have a vote in one?—I am afraid you misapprehend the answer I have given; I stated that I would only apply the remedy in the case of proprietors whose rental did not exceed 50*l.*; I think he should have a vote in every county in which his rental does exceed 50*l.*

8031. Do you think 50*l.* a proper sum to fix that distinction at?—I think it is; you must be in some degree arbitrary.

8032. *Mr. Fox Maule.*] Why do you fix so large a sum as 50*l.*?—Because I think a man would not embark, with a view to a vote merely, so large a sum of money as would be required to purchase a property yielding a rental of 50*l.*

8033. *Sir William Rae.*] Would not that limit the constituency of the county very much?—I do not think it would; I have made inquiries about that, and I am told that it would not disqualify above eight or ten individuals in Peeblesshire, always throwing out of view those who have been enrolled in consequence of these new votes.

8034. *Chairman.*] Would it not disqualify the local constituency?—No; I have also been making inquiries on that subject, and I think that it might rather have the effect of enlarging the local constituency, because the properties which are purchased by strangers would afford the means of enrolling those (whatever side of politics they may be on) who are tempted by high prices to sell; whereas by selling them to strangers the subject is converted into money, which is not a means of qualification.

8035. *Sir William Rae.*] You are aware that residence is not required by the English or Irish Acts?—In counties it is not; but residence is enforced with regard to boroughs; and I must say, it has had, in Scotland, so far as I have had the opportunity of seeing, the effect of confining the exercise of the elective franchise to those who are peculiarly interested in the towns.

8036. You see no objection to the qualification in Scotland being varied from that which exists in England and Ireland?—I am very unwilling that there should be any distinction between the countries; but you are perfectly aware that there are distinctions in this respect between England and Scotland; in England they have 40*s.* freeholders, which we have not, which increases their constituency to a very large extent; and if you are to act on the principle of not allowing any distinctions, I rather think the natural inference is, that you should extend the suffrage in Scotland.

8037. *Mr. Fox Maule.*] Supposing that it had been shown to you, that the same system exists in England and Ireland as you are convinced in your own mind exists in Scotland, would you not recommend the same remedies for England and Ireland?—Yes, most undoubtedly.

8038. *The Lord Advocate.*] Is there any limitation to joint tenancies that you would

would suggest?—I think, both with reference to joint tenants, and also joint proprietors, I would, in addition to enforcing residence in the manner I have explained, also restore matters to what they were in the year 1832; that is, I would take what was the average number of joint tenants and joint proprietors on properties at that time, and restrict the franchise to that number, and I should think, from what experience I have had, that the average number would not exceed two.

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8039. You think an enactment that there should not be more than two joint proprietors and two joint tenants on the same property, would be expedient?—I think it would.

8040. Do you think any advantage would arise from insisting that seisin should be taken in all cases, in order to constitute a vote?—I do not think seisin would prevent the system being carried on; I think it might deter men to a certain extent, but it would not prevent it. I think it would deter a poor man from claiming, on account of the great expense of the seisin, compared with the value of the property. It would perhaps deter the rich man from creating these votes, from the circumstance that those persons who acquire the joint property would have a real right, and in the event of any of them becoming bankrupt, or in the event of any of them dying, the creditors in the one case would come in to the estate, and in the other the heir of the party might be of entirely different politics from the person to whom he had conveyed, and thus the object be defeated.

8041. *Sir William Rae.*] Then, to a certain extent, that would remove the evil?—I think it would deter many; but I doubt if among the rich classes it would have that effect, because we know that under the old system, neither the expense nor the consequence of granting these votes did deter them from doing it.

8042. Would the insisting on seisin being taken in all cases be attended with hardship to feu-holders who succeeded in small properties?—I think it would, in so far as it would put them to unnecessary expense.

8043. Is it not usual for parties possessing property to get themselves infest?—Yes, that is the usual practice; but among the poorer classes of people, it is not so generally done as by proprietors of large estates; they generally conceive that if they get the titles into their possession, and thereby prevent the persons from whom they have acquired the property from granting a double conveyance, and if they have some reliance on their honesty, they are tolerably secure.

8044. *The Lord Advocate.*] Is it not usual, where properties have descended from father to son, that in many cases they do not take seisin?—I have seen several cases of that kind.

8045. Do you think this mode of creating votes would be materially prevented by an enactment, that the heritable burthens of the property should be deducted?—I have not had great experience as to creating votes on burthened property; and I have not turned my mind much to the subject. The impression on my mind is, that in cases of persons acquiring property by purchase, they should be required to deduct, and that this would, to a certain extent, check the system;—one reason entering into my mind is this; that I think, as a lawyer, (and I have conversed with several gentlemen, members of the bar, on the subject,) that a person who acquires a property by purchase, burthened with heritable debts, does not thereby become personally responsible for these debts; the estate is pledged; the personal obligation is on the person who originally borrowed the money; but the purchaser comes under no personal liability for those debts, unless, to be sure, he enter into possession and levy the rents, in which case I think he would be liable, but only to the extent of his intromissions with the rents.

8046. *Mr. Fox Maule.*] Do not you think, if it was necessary, that the subject should be of the clear value of 10*l.*, and it should be proved to be of the clear value, that it would prevent many, who, by adding to small property borrowed money, make up a vote, from effecting the franchise in what certainly is at present a legitimate manner, but which could not be avoided, because poor people might be inclined to borrow money, and burthen their property, either from rich landlords or their friends, or candidates, who might be inclined to advance the money?—Supposing you are referring to purchasing and borrowing on the property, I am inclined to agree that it would prevent many. In the case where the party borrows, and becomes personally liable for the debt, I am not at present inclined to think that you should there deduct, because I think the person

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having come under the actual obligation to pay the debt (and you may enforce payment from him), that he must be regarded as the true and full proprietor of that subject, having the beneficial interest; but, on that point, I am not prepared to give a specific answer.

8047. *Sir William Rae.*] Substantially would it not be equally nominal if he burthens the property to its full value?—He stands very much in the same position, with this difference, that he has come into the position by borrowing money on his personal liability. It is the difficulty which would be interposed by the circumstance of being personally liable, which is my only reason for drawing a distinction between the acquirers of burthened property and borrowers on property not burthened. Perhaps the more expedient course would be, to have the debts deducted in all cases.

8048. The law contemplates a man having a free and unincumbered 10*l.* from the property?—The Act does not contemplate that; the Act admits to the roll, although the man does not draw a fraction, provided the property be of a particular value; of the annual value of 10*l.* in the market; but does not require that that value should come into his pocket.

8049. Is not that in opposition to the preamble of the Act?—If you construe the term property as implying beneficial interest of 10*l.*, then it is contrary to the preamble; the construction put on it by lawyers is, that it is not a beneficial interest, but the value of property in possession. If I were legislating on the subject, I have said that it might be expedient to require the 10*l.* beneficial interest.

8050. *Mr. Fox Maule.*] What is your opinion on the subject of rendering the subject of 10*l.* value clear above all incumbrances?—The inclination of my opinion is to have a clear interest of 10*l.*

8051. Are there any other remedies?—I certainly think all cases of conveying the life-rent, reserving the fee, ought to be extinguished; and all those joint life-rents.

8052. Entirely?—Yes.

8053. Even although on 50*l.* a year?—Yes, I think there should be no votes on life-rents, except in cases similar to those which existed at the time the Reform Act passed; in those cases the party gave away the fee and kept the life-rent or the fruits to himself; I am speaking of real transactions. Then there were life-rents in cases of offices as clergymen and schoolmasters and so forth, and I think there could be no objection to any life-rent acquired by deed of succession.

8054. *Sir William Rae.*] Then you would make the law of Scotland with regard to qualification, at variance with regard to England and Ireland?—I am not aware what it is in England and Ireland in regard to life-rents.

8055. Supposing in England life-rents constituted by grant to form a qualification, would not your proposal render the law of the two countries at variance?—I am of opinion, that in order to check the evil, whether the evil exists in England, Ireland or Scotland, that this must be done.

8056. As regards life-rents, nothing short of the actual abolition could insure that?—I think so, subject to the above exceptions.

8057. *Mr. Fox Maule.*] That merely affects life-rents where the fee is reserved and the life-rent given away?—Yes.

8058. *The Lord Advocate.*] Which transactions you think would not arise in the fair and ordinary course of business?—It is not probable that they would.

8059. Does this mode of creating votes produce expense and delay in the Registration Court?—Very great expense and delay; I am quite confident that in Peebles-shire almost two-thirds of the expenses were produced by the discussion connected with these cases; I think we were occupied about three weeks in Peebles-shire, and I should say that in the course of one week all the cases, with the exception of these cases, might have been disposed of. I am quite confident, that the expense of counsel, agents and witnesses in those cases, and then carrying them up to the Appeal Court, (for all these cases were appealed in order that they may be open before an Election Committee), must have been on both sides enormous. It is necessary to carry to the town where the Appeal Court is held all the witnesses and agents and counsel, and there the cases are re-tried.

8060. *Sir William Rae.*] You say it is necessary to call the witnesses in the Appeal Court; might not some remedy be applied to that last proceeding?—
I think

I think so ; and indeed it does appear to me, that the present constitution of the courts is calculated to create very great and I think very unnecessary expense, and that a very great improvement might be made. The improvement that has suggested itself to me is this :—I think the cases might be tried before a single sheriff in his county, that his notes should be evidence of the facts, and that in order to have the matter of law settled for the whole country, there should be an appeal, not to the tribunals, as at present constituted, but to a tribunal in Edinburgh, to which you should bring up, not the witnesses, but only the notes of the sheriff ; that the discussion should take place before this tribunal, which should consist of two judges of the Court of Session, not as members of the Court of Session, but as a separate independent tribunal. In this way we would very soon have the whole election law of Scotland settled in a very authoritative manner, and much expense, trouble and delay would be avoided. At present we have great difficulty in consequence of the decisions of the sheriffs being in some degree conflicting.

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8061. *The Lord Advocate.*] Are there any other observations that occur to you on that point?—There are ; we have the greatest difficulty in investigating the cases, from the deeds not being produced till we come into court. The consequence of that is, that when you call for the deeds, you have to give a hurried glance at them ; the cases are pressing, and you are forced to go on rapidly ; and in that manner it is quite possible that a number of cases that ought not to be on the roll are admitted on the roll from the impossibility of counsel and agents investigating the deeds there. Another great obstacle is the difficulty of bringing up the parties and the witnesses ; and the great expense in calling the witnesses where they reside beyond the territory ; more particularly there is a great difficulty from the rule laid down, that the notice sent to the party in terms of the statute, with a requisition to him to attend, and to be examined, is of no avail whatever, unless he be personally cited. Then that rule has an unjust operation in this respect, that while all those who belong to what I may call the industrial classes, being resident within the county, are always accessible, and can be compelled to come up and attend the court day after day ; we have the greatest difficulty in bringing up those who are non-resident ; the citation must be served on them personally ; and it is very difficult to get that personal citation accomplished, because the courts being held in the autumn, a great number of gentlemen go a shooting and on summer excursions, so that we cannot get the process served on them. If they are abroad the difficulty is insuperable, as we found in the case of those Irish gentlemen I mentioned.

8062. *Sir William Rae.*] Would not the infestment go far to remove the first objection, as to seeing the deeds in court?—Yes, if it was required to be registered a certain period before the registration.

8063. *The Lord Advocate.*] Would the infestment show the private agreement of the parties?—Not it all.

8064. The infestment would show no more of the deeds than what is quoted?—Not more.

8065. It is not usual to quote the whole deed?—No ; the notary states the general nature of the deeds, and then he inserts the precept of seisin, as the warrant of infestment.

8066. *Sir William Rae.*] Might it not be provided that seisin should be taken by means of the registration of the document?—There would be no objection to that.

8067. *The Lord Advocate.*] Would you make that rule applicable to votes alone, or to other cases?—It must be in all cases.

8068. *Sir William Rae.*] Might it not be optional?—Then no person would do it.

8069. Leave it to the party either to infest by the registration of the document or the other way?—As far as giving notice it would be expedient, but it would tend to create confusion in the records.

8070. *The Lord Advocate.*] According to these observations, the expense would continue the same in the sheriff's original court, although the change you suggest took place, unless residence is enforced ; is that your opinion?—Yes.

8071. *Sir William Rae.*] How would residence diminish the expense?—By extinguishing all those votes. As illustrative of this, I may mention that in Peebles-shire we entered into an arrangement, that, with regard to the *bonâ fide*

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fide cases, we should have no investigation of the values, but should depend on valuers to be named by the sheriff; in that way we got over these cases very rapidly, and at little expense, but the parties would enter into no arrangements with respect to the other class of cases, and therefore we had very anxious, tedious, and consequently expensive investigations to make.

[The Witness delivered in the following Paper:]

LIFE-RENTERS inrolled in the County of Peebles, in the Year 1836.

CONSERVATIVE.	Granters' Names.	LIBERAL.	Granters' Names.
1836:		1836:	
John Borthwick, of Crookston, Mid Lothian	Sir John Hay, by one deed.	Walter Adam, M. D., Edinburgh	A. G. Carmichael, younger, of Skirling, by one deed.
Robert Grant, of Kincorth, advocate, Edinburgh		James Anderson, leather-merchant, Edinburgh	
Robert S. Moncrieff, Leopold-place, Edinburgh		John C. Brodie, Edinburgh	
Alexander Pringle, of Whitebank, M. P. for Selkirkshire		James Crawford, advocate, Edinburgh	
George Thomson, of Burnhouse, advocate, Edinburgh	Sir John Hay, by one deed.	James B. Crease, merchant, Edinburgh	A. G. Carmichael, younger, of Skirling, by one deed.
Adam Urquhart, advocate, Edinburgh		Peter Crooks, w. s., Edinburgh	
Hugh Bruce, advocate, Edinburgh		J. B. Gracie, w. s., Edinburgh	
William Bruce, wine-merchant, Leith		Alexander Jameson, merchant, Edinburgh	
Alexander Cunningham, tenant, Carterhaugh, Selkirkshire	Sir John Hay, by one deed.	James B. Jardine, younger, of Hallside	A. G. Carmichael, younger, of Skirling, by one deed.
James H. Dundas, w. s., Edinburgh		Peter Lamont, brewer, Edinburgh	
James Erskine, of Shielfield, writer, Melrose, Roxburgh		John Lees, tobacconist, Edinburgh	
James Rose, w. s., Edinburgh		Augustus Maitland, w. s., Edinburgh	
Robert D. Douglas, Procurator Fiscal of Peebles-shire	Sir John Hay, by one deed.	Thomas Mansfield, accountant, Edinburgh	A. G. Carmichael.
William Halliday Rosebank, writer, Dumfries		George Meikle, merchant, Edinburgh	
William Hay, teacher, Edinburgh		Andrew Millar, merchant, Edinburgh	
Patrick Robertson, advocate, Edinburgh		Adam Paterson, w. s., Edinburgh	
James Robertson, British Linen Company, Edinburgh	Sir John Hay, by one deed.	Ralph Richardson, tobacconist, Edinburgh	A. G. Carmichael, younger, of Skirling, by one deed.
William Stewart, deputy presenter of signatures in Exchequer, Edinburgh		John R. Stoddart, w. s., Edinburgh	
John Waugh, farmer, Robertson Mains, Mid Lothian		James G. Thomson, wine-merchant, Edinburgh	
Henry Inglis, Logan-bank, w. s., Edinburgh		Robert Thomson, merchant, Edinburgh	
John Inglis, advocate, Edinburgh	Sir John Hay, by one deed.	William Wemyss, Edinburgh	A. G. Carmichael.
Robert Macqueen, younger, of Brayfield, Lanarkshire		George Rutherford, writer, Edinburgh	
Alexander Cunninghame, w. s., Edinburgh		William G. Craig, younger, of Riccarton	
John Maitland, writer, Edinburgh		J. T. G. Craig, w. s., Edinburgh	
Henry J. Burn, w. s., Edinburgh	Wm. Forbes Mackenzie, of Portmore, by one deed.	George Dalziel, w. s., Edinburgh	A. G. Carmichael, younger, of Skirling, by one deed.
Douglas Cheape, advocate, Edinburgh		David Cormack, s. s. c., Edinburgh	
Sir David Dundas, of Dunira		Maurice Lothian, s. L., Edinburgh	
John Forbes, of the Coldstream Guards		John Lothian, s. s. c., Edinburgh	
William Grieve, farmer, Braxholm-park, Roxburghshire	Wm. Forbes Mackenzie, of Portmore, by one deed.	James Montgomery, of Whim	Dr. John Renton, Pennycuik.
George Irving, w. s., Edinburgh		Alexander Gray, residing at Broomknow	
George Scot, of Todrig, Roxburghshire		Andrew Kerr, flesher, Selkirk	
Charles Scott, tenant, Milsington, Roxburgh		John Wilson, advocate, Edinburgh	
Thomas Scott, son of Charles, Roxburgh	Wm. Forbes Mackenzie, of Portmore, by one deed.	William Jackson, residing at Stowe	His brother, James Gray.
James Robertson, w. s., Edinburgh			
Sir John S. Forbes, of Pitsligo, bart. Edinburgh			
William Sharpe, w. s., Edinburgh			
James Wedderburn, Heriot-row, Edinburgh	Wm. Forbes Mackenzie, of Portmore, by one deed.		James Paterson, iron-monger, Peebles.
Robert Dundas, of Arniston, Mid Lothian			
William P. Dundas, advocate, Edinburgh			
Henry Dundas, captain, R. N.			
Sir John Hope, of Craighall, Mid Lothian	Wm. Forbes Mackenzie, of Portmore, by one deed.		John Fotheringham, writer, Peebles.
Archibald Hope, son of Sir John, Mid Lothian			
John D. Hope, wine-merchant, Leith			
Hugh Hope, son of Sir John			
George W. Hope, barrister, London			His father.

CONSERVATIVES.	Granters' Names.	LIBERAL.	Granters' Names.
<i>1836—continued.</i>			
Colonel James Russell, of Ashiestiel, Selkirkshire -	Wm. Forbes Mackenzie, by one deed.		
Thomas Tod, of Drygrange, Roxburghshire -			
William S. Walker, of Rowland, Mid Lothian -			
John J. Macbraire, of Fishwick, Berwickshire -	William Allan, of Glen, by one deed.		
Thomas Sprot, w. s., Edinburgh -			
Mark Sprot, of Garnkirk, residing in Fifeshire -			
Mark Sprot, of Riddle, Roxburghshire -			
John Sprot, East India Company's Service -			
James Sprot, of Sprot, East Lothian -			
Alexander Allan, advocate, Edinburgh -			
George Allan, major, 5th Regiment of Foot -			
James A. Cheyne, w. s., Edinburgh -			
Alexander Campbell, brewer, Edinburgh -			
Thomas Johnstone, of Underwood, s. s. c., Edinburgh -			
William P. Barker, of Kilcooley Abbey, Tipperary, Ireland -	Rev. John J. Beresford, by one deed.		
Rev. Charles C. Beresford, Drumlane, county of Cavan, Ireland -			
Robert Fowler, eldest son of the Bishop of Ossory, county Meath, Ireland -			
Barker Thatcher, Ballymalish, Queen's County, Ireland -			
William Tod, gamekeeper, Macbie hill -			
Charles E. Allan, w. s., Edinburgh -	Wm. Forbes, Esq., advocate, by one deed.		
John Anstruther, w. s., Edinburgh -			
Stewart A. Hare, of Calderhall, Mid Lothian -			
Robert Blackwood, bookseller, Edinburgh -			
Andrew Bonar, banker, Edinburgh -			
John Bonar, banker, Edinburgh -			
William B. Callender, of Prestonhall, Edinburgh -			
Robert D. Cay, w. s., Edinburgh -			
George Cumming, w. s., Edinburgh -			
James W. Drummond, younger, of Hawthorndean -			
Allan E. Lockhart, of Berwick-brae, Berwickshire -			
William Maule, of county Cork, Ireland -			
Ebenezer M. G. Colquhoun, advocate, Edinburgh -			
William Maxwell, younger, of Cardoness, advocate, Edinburgh -			
James H. Maxwell, advocate, Edinburgh -			
Captain Alexander Milne, R. N. -			
Nathaniel Spiers, w. s., Edinburgh -			
James Tytler, of Woodhouselee, Edinburgh -			
William Robertson, younger, advocate, Edinburgh -			
John Spiers, M. D., Edinburgh -			
Francis Spalding, merchant, Peebles -	The father of the parties.		
William Spalding, Needpath -			
Thomas Spalding, nurseryman, Peebles -			
William Bartram, Eastlodge, Stobo Castle -	Sir James Montgomery, of Stobo, by one deed.		
James Grieve, overseer, at Stobo Mill -			
Peter M'Carter, butler, at Stobo Castle -			
James Turnbull, builder, Peebles, partly life-rent and partly fee -	Father of the party.		
Lord Elcho -	Earl of Wemyss.		
Alexander Stevenson, w. s., Edinburgh -	Adam White, his father-in-law.		
William Bell, advocate, Edinburgh -	W. Loch, of Rachan.		
James Clerk, younger, of Pennycuik -	Sir G. Clerk.		
William Fergusson, surgeon, Edinburgh -	Charles Rankine.		
Thomas L. Veitch, w. s., Edinburgh -			
William Tenant, grocer, Edinburgh -	Father of the parties.		
Robert Tenant, Whitfield -			
Adam Sim, of Coultermains -	His brother-in-law, Mr. White.		
Theodosius F. Ewart, writer, Edinburgh -	His brothers.		

Patrick Shaw.

Martis, 18^o die Aprilis, 1837.

MEMBERS PRESENT :

Mr. Fox Maule.
Mr. W. Campbell.
Sir Hugh Campbell.

Mr. Divett.
Sir William Rae.
Mr. Buller.

THE LORD ADVOCATE IN THE CHAIR.

William Forbes Mackenzie, Esq., called in ; and Examined.

*W. F. Mackenzie,
Esq.*

18 April 1837.

8072. *Chairman.*] YOU are proprietor of the estate of Portmore, in the county of Peebles?—I am.

8073. You succeeded to that estate on your father's death?—I did, in 1830.

8074. You are nearly related to Sir John Hay, the Member?—My mother is his cousin-german.

8075. Did you, in the year 1836, grant life-rent conveyances of part of the estate of Portmore to certain individuals?—I did.

8076. Those conveyances were in separate batches?—They were in separate batches, so far that they were different farms.

8077. How many were upon the lands of Kilburn?—Thirteen.

8078. Can you state their names and designations?—They were Henry J. Burn, writer to the signet; Sir John Stewart Forbes, baronet; George Irving, writer to the signet; Douglas Cheap, professor; John Forbes, of the Coldstream Guards; William Sharp, a writer to the signet; Sir David Dundas, baronet; James Robertson, writer to the signet; William Grieve—I am not aware what he is; George Pott, esquire; James Wedderburn, esquire; C. Scott—I think he was at that time tenant of Milsington, but he is now a tenant of Sir John Hay's, in Peebles-shire; T. Scott, I do not know his designation.

8079. Were any of those gentlemen at that time connected with the county?—James Robertson was for one; he is a brother of the minister of the parish of Edlestone.

8080. Mr. *Maule.*] Has he any property in the county?—None; he is a writer in Edinburgh; Sir John Forbes is also connected with the county by family, but he has no property there.

8081. None of those gentlemen have any property in the county?—They had none, that I am aware of, previous to this conveyance of mine.

8082. *Chairman.*] Were any of them connected with the county in any other way?—Not to my knowledge; the two Scotts are now farmers of Sir John Hay's; they have taken a farm since that period.

8083. Did any of them apply to you to convey this property to them?—They did not.

8084. Did you apply to them?—I did, to most of them, personally; not to all.

8085. How did the agreement take place with regard to the purchase and the price that was to be fixed?—I asked them to take a conveyance of land in the county of Peebles, to enable them to come upon the roll, and they agreed; the price was fixed according to the value of an annuity upon their lives for the amount of the conveyance; they were not all exactly the same.

8086. Were they to have a certain proportion of the rents of the farms?—They were to have a certain proportion of the rents of the farms during their lives.

8087. What was to happen if the farm increased in value, were they to have an increased rent?—There was no mention made of any such circumstance.

8088. Or if the farm fell in value?—There was no mention made of that contingency.

8089. What do you conceive would be the operation of the deed on the right they acquired, in the event of the farm rising or falling in value?—Most unquestionably

tionably the operation of it would be that if the value increased they would gain an increased rent, and if it fell they would suffer the loss.

8090. You formerly superintended your own estates and the improvement of them?—I did, but I ceased to do so previous to this; I found it inconvenient, and my brother undertook to do it for me.

8091. Mr. *Maule*.] In those transactions of giving those life-rent conveyances to the 13 gentlemen upon the farm of Kilburn, who acted as the agent on your part?—Mr. Robertson.

8092. Is he your usual personal agent?—He is not.

8093. Is he a political agent?—He is Sir John Hay's political agent in the county.

8094. Who acted for the gentlemen to whom the conveyances were made?—I believe Mr. Douglas, a writer in Peebles.

8095. Is he a political agent at all?—He was not at that time.

8096. Since what time has he been retained as a political agent, to the best of your knowledge?—He has ceased to be a political agent; he ceased, I think, on his being made procurator fiscal.

8097. He had been a political agent previous to that time?—I rather think he had.

8098. *Chairman*.] There was a price fixed by annuity?—Yes, calculated according to the value of the annuity.

8099. How was that paid?—By bill, in most instances.

8100. Are there instances in which it was paid in money?—No; in the case of Sir John Forbes, William Grieve and George Pott, it was paid by conveyances of land of equal value.

8101. Where were those other lands which were so conveyed?—Sir John Forbes conveyed lands to me in Kincardineshire, a life-rent conveyance of land.

8102. How was the value adjusted so as to meet the value of his in Peebles?—I believe there was no particular adjustment; he conveyed to me a vote in one county, and I conveyed to him a vote in another.

8103. Was there no calculation of the respective price?—I am not aware that there was.

8104. Mr. *Maule*.] Does Sir John Forbes derive any beneficial interest from the subject on which he holds his vote?—He has drawn the rent of it.

8105. Have the rents been regularly paid to him?—They have, to him or to his agent.

8106. Do you regularly draw the rent on the subject for which you vote in Kincardineshire?—I really do not know yet if I have drawn any rent at all.

8107. When did you come upon the roll?—I am not aware that I am upon the roll at present; I believe my claim will be presented the next registration; but I am not certain upon that head.

8108. You have stated the transaction in Kincardineshire was to balance the transaction in Peebles-shire?—Yes.

8109. But you have not yet had the transaction in Kincardineshire carried through?—A conveyance of land has been made to me; but I believe my claim has not been given in in consequence of it.

8110. What date does the conveyance of land to you bear?—I do not know; I have merely stated that the arrangement was, that Sir John Forbes was to convey to me to the amount of ten guineas in Kincardineshire, and upon that I made a conveyance to him; but I cannot speak as to the date of the deed.

8111. Mr. *W. Campbell*.] You state that Sir John Forbes has drawn the rent for the land in Peebles-shire?—Yes.

8112. How are you repaid by him, if you do not receive any rent?—I presume that the rent in Kincardineshire has been paid to me.

8113. Then for the land conveyed to you, you have received no value?—I take for granted the rent has been paid; but it is not within my own personal knowledge.

8114. Does the same agent act for you as acts for Sir John Forbes?—I really cannot answer that question; I rather think the transfer was made to me by Sir John's private agent, Mr. Storey.

8115. Are you aware by whom Sir John's rent was drawn?—His rent on that property in Peebles-shire was drawn by Mr. Douglas.

8116. Is

W. F. Mackenzie,
Esq.

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8116. Is Mr. Douglas your agent?—No; he never acted as my agent.

8117. Is he a political agent?—He was not at that time, and is not now.

8118. *Chairman.*] You mention that you had made an exchange with Mr. Pott, or received property from him?—I feel great difficulty in speaking to these transactions, from the want of personal knowledge; but my belief is that Mr. Pott conveyed land to Mr. Beresford, of Magbie Hill, and I believe that I hold Mr. Beresford's bill as my remuneration for Mr. Pott's vote.

8119. How was that arrangement made, by you or by whom?—By Mr. Robertson.

8120. He being Sir John Hay's political agent?—Yes.

8121. With regard to Mr. Grieve, you stated that you had made an exchange with him?—Mr. Ogilvie, of Chester, conveyed land to me in Roxburghshire in lieu of that; and I presume he holds Mr. Grieve's bill.

8122. Did Mr. Grieve give you a bill?—No; I think Mr. Ogilvie granted me a conveyance of land in Roxburghshire in lieu, he receiving Mr. Grieve's bill in payment of it.

8123. He received Mr. Grieve's bill on account of the vote he acquired from you?—Yes.

8124. *Mr. W. Campbell.*] Has Mr. Grieve drawn rent for that portion?—Yes.

8125. Have you drawn rent in Roxburghshire for the land you hold there?—That is just one of the transactions I cannot speak to; that would be done by my agent; I do not draw my own rents on my estate in Peebles-shire.

8126. *Chairman.*] Did all the others on that farm pay by bill, or did any pay by money?—All the others paid by bill.

8127. Have any of those bills since been paid?—I believe not; I have reason to believe that payments to account of some of them have been made; but I cannot speak positively to that.

8128. *Mr. Maule.*] What is the rent of the farm of Kilburn?—One hundred and sixty pounds a year; but I conveyed only thirteen-fifteenths of it to those gentlemen.

8129. If you conveyed away thirteen-fifteenths of this farm, are you aware of any remuneration you received in place of it?—I have received some bills.

8130. Did the bills bear interest?—Yes.

8131. Have any of them been paid up yet?—The bills are in the hands of my brother; I do not believe any of them have been paid up.

8132. *Chairman.*] Do you know in what manner the interest on those bills has been paid; was it paid to your brother or in Edinburgh?—I really do not know; I believe the bills were to bear interest at the rate of four per cent., but I cannot say; I shall know when I receive his half-year's account.

8133. *Mr. W. Campbell.*] Do the amount of rent and the amount of interest tally?—Certainly not.

8134. Can you state the difference between the amount?—No, but I can calculate it, if it is wished.

8135. What was the amount of the sum paid by each individual?—It was paid according to the value of the annuity upon their lives, varying, of course, according to their ages.

8136. Regulated by what tables?—The tables of some life assurance office in Edinburgh.

8137. *Chairman.*] You retained two-fifteenths; how is the farm conducted as to improvements?—There have been no improvements upon it.

8138. As to the mode of management, how were your shares managed?—I believe nothing has been done upon the farm; it was recently let, and there was no occasion for any thing to be done.

8139. How were the public burthens paid?—I rather think that the deeds bore that the public burthens were to be exempted.

8140. *Mr. W. Campbell.*] Is the farm held by the same tenant now as held it at that time?—Yes.

8141. *Chairman.*] By exempted, you mean that you should pay the burthens and that they should be free from them?—Yes.

8142. *Mr. Maule.*] In regulating the value of those annuities, do you know whether Mr. Donald Horne was employed by any of those parties, or did you employ him?—I did not.

8143. Do

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8143. Do you know whether he was involved in any of those transactions?—I can scarcely say that I know it; I believe, in the conveyance of the Roxburghshire lands to myself and Mr. Beresford, he might be employed; but I cannot say positively; I know he is the political agent in Roxburghshire.

1144. All those transactions in respect of the life conveyance of the lands of Kilburn were done by the political agent of the party in the county, not your own private agent?—Yes, they were.

8145. To whom does the tenant of Kilburn pay his rent at this time?—He pays my agent to the amount of two fifteenths, and the remainder to the agent appointed by the disponees.

8146. Your agent gives the receipt for only two fifteenths of the amount?—I believe so.

8147. Who is your agent?—My brother, James Hay Mackenzie.

8148. Who is the agent who receives the thirteen-fifteenths?—Mr. Douglas.

8149. *Chairman.*] Did you make some votes on the lands of Fernie-hole?—I conveyed the farm of Fernie-hole to certain gentlemen, who have since claimed as proprietors of it.

8150. Who were they?—They were Sir John Hope, of Pinkie; Archibald Hope, his eldest son; John David Hope, his second son, a wine merchant in Leith; Hugh Hope, his third or fourth son, and George William Hope, the eldest son of Sir Alexander Hope, of Loughness.

8151. Were any of those gentlemen connected with the county previously to that time?—Not to my knowledge.

8152. Did they apply to you for the purchase?—They did not.

8153. Did you offer it to them?—I did.

8154. How was the price adjusted?—With the exception of Sir John Hope and John David Hope, by bill.

8155. *Mr. Maule.*] Did you make this offer to those gentlemen, as being an advantageous transaction for you in your character of a proprietor?—No.

8156. You did not anticipate deriving many advantages from it in that character?—I did not expect to derive any disadvantage.

8157. You did not expect that it would increase your profits arising from the property?—No.

8158. But you calculated that it would leave your book, with your account as to debtor and creditor, very much the same as it was before?—It could not do that.

8159. Would you have been at a considerable loss, or any loss at all, on the transaction?—Not eventually.

8160. Would you have gained eventually?—I might gain; supposing any of those gentlemen were to die, their annuity would fall in to me, and I should have their bill in hand.

8161. *Chairman.*] There were two who did not settle by bill; how did those settle?—Sir John Hope conveyed land to my brother-in-law, Captain Kerr, of Kadrona, and I hold Captain Kerr's bill; the other was John David Hope; my brother James got a conveyance of land in Mid Lothian to the value, and I hold my brother's bill.

8162. The others you say granted bills; have any of the bills been paid?—No, not to my knowledge.

8163. Do you know how the rents have been received?—By an agent appointed by those gentlemen.

8164. Who is the agent?—Mr. Douglas; he is agent for the disponees.

8165. *Mr. Maule.*] Does Mr. Douglas, as agent for the disponees, pay to you or your private agent the interest which the bills bear?—That is exactly a similar question to that to which I before said I could not give an answer; I do not know till I see my next six months' account from my agent.

8166. You look to Mr. Douglas as being responsible for the interest on the bills?—I look to those parties as being responsible for the interest on the bills.

8167. *Mr. W. Campbell.*] What was the annual value of this farm?—Fifty-eight pounds.

8168. How many votes were made upon it?—Five.

8169. *Chairman.*] Did you make any votes on the lands of Shiphorns?—I conveyed part of the lands to certain gentlemen.

8170. With a view to giving them a qualification?—Certainly.

8171. How many are there upon it?—There are three; but the rental is 90 *l.*

8172. How were they conveyed?—I conveyed three-eighths of the farm to three gentlemen,

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gentlemen, William Stuart Walker, of Bowland, Major-General Sir James Russell, of Ashysteel, and Thomas Todd, of Drygrange.

8173. Did you offer those conveyances to those gentlemen in the same manner as in other cases?—No, not to those three I did not; Sir James Montgomery requested them to take my conveyance.

8174. In what way were they paid for?—Sir James Russell and Mr. Todd paid by bill; Mr. Walker conveyed lands to me in Selkirkshire.

8175. Have you received the rents of those lands in Selkirkshire?—I cannot say, not personally.

8176. Who is your factor, who draws your rents in Selkirkshire?—I do not know; I presume they will be paid to my brother, but I cannot positively say.

8177. Mr. W. Campbell.] Those gentlemen have received their rents from this farm?—Yes.

8178. They have been drawn by Mr. Douglas?—Yes.

8179. Chairman.] Have either of the bills been paid by Mr. Todd or Sir James Russell?—No.

8180. Did you make any other votes upon your estate?—I conveyed the farm of Craighburn to three gentlemen.

8181. What is the annual value?—Thirty-five pounds.

8182. Who were those gentlemen?—Robert Dundas, of Arniston, Captain Henry Dundas, of the Royal Navy, and William Pitt Dundas, advocate.

8183. Did you offer a conveyance to those gentlemen?—I did.

8184. Was the price adjusted by calculation of the annuity?—Yes.

8185. How was it paid?—By bill.

8186. Have they drawn the rents?—They have, through Mr. Douglas.

8187. Have any of the bills been paid?—I believe not.

8188. Have you received interest on any of the bills?—That I cannot answer, any more than the others; I have no doubt the interest is paid, but I do not know it.

8189. Did you make any other conveyances on your own estate that year?—I did not.

8190. Were there real and heritable burdens on your estate?—There were.

8191. If those real and heritable burdens had been deducted proportionably from those different properties over which they extended, would there have been sufficient rent to have given 10*l.* to each of the purchasers?—There would not.

8192. Mr. Maule.] Are you proprietor of any other farms in the county of Peebles?—Of many.

8193. Have you made any arrangements to make qualifications upon those farms for the ensuing registration?—Upon some of them.

8194. Have you arranged to dispose of qualifications for the purpose of creating votes at the ensuing registration?—I have already disposed of some in fact.

8195. In making this arrangement, have you pursued the same system by which you have already created thirteen votes on Kilburn, five votes on Ferniehole, three on Shiphorns, and three on Craighburn?—I believe so.

8196. You have stated to the Committee that none of those gentlemen who have acquired votes over the above-mentioned farms are at all connected by property with the county of Peebles?—With the exceptions before stated, there are none of them; there are two who are now, but who were not at that time; they are now tenants in the county.

8197. Are any of the gentlemen whom you have mentioned, except those two, resident in the county?—I might except James Robertson; his birth-place, his father's house and his brother's house are there; he is a writer to the signet; there are no others resident there.

8198. Can you call James Robertson a resident in the county of Peebles?—No, there are none of them resident there.

8199. Sir William Rae.] How far is Bowland from Peebles-shire?—I believe Bowland joins Peebles-shire.

8200. How far is Arniston from Peebles-shire?—Arniston is about five or six miles from the boundaries of Peebles-shire.

8201. Mr. Maule.] Do you consider that any of those twenty-four gentlemen would have acquired the property you have disposed of to them, except for political purposes?—I do not.

8202. Sir

8202. Sir *William Rae*.] The whole of those conveyances you say were made for the purpose of creating a qualification in the county?—They were, most unquestionably.

8203. You conceived the law authorized it, and that there was nothing wrong in it?—Quite so.

8204. They were *bond fide* transactions?—They were.

8205. The parties purchasing paid the price, and you conveyed the subject?—Certainly.

8206. The individuals were gentlemen of independent fortune and character?—They were.

8207. Are they under any tie with respect to the course of their political conduct?—Not a single syllable ever passed between us on the subject.

8208. Have you any means of withdrawing the life-rent in case of their taking an opposite course in politics?—I have none.

8209. Mr. *W. Campbell*.] The political sentiments of those gentlemen are pretty well known?—I believe they are. I beg leave to correct my statement with regard to the preparations of this year; there are some of a different character; they are not life-rents; they are out-and-out conveyances in fee.

8210. *Chairman*.] Is that the only respect in which they differ?—No, the money has been paid in cash to my agent.

8211. The full price?—Yes, the full price, calculated according to the value of the land at so many years' purchase.

8212. Mr. *Maule*.] In how many counties do you yourself hold a qualification by exchange of life-rent upon your own property?—I hold it in two, and am capable of holding it in a third.

8213. Will you name the counties?—I hold it in Selkirkshire and Roxburghshire, and I am capable of holding it in Kincardineshire.

8214. Do you hold the franchise in any other county?—I am a freeholder in Mid Lothian; I am part proprietor of a house in Dalkeith; my brother John has the other half.

8215. *Chairman*.] You are inrolled for that in Mid Lothian?—Yes, and have been for some years.

8216. Have you a vote in East Lothian?—No.

8217. In any other counties?—I am an old freeholder in Ross-shire, and of course I am a freeholder in Peebles-shire, and I am also a freeholder in the city of Edinburgh.

8218. In West Lothian?—No; but those three last are votes I held long before the Reform Bill passed.

8219. Sir *William Rae*.] You and Sir John Forbes are about the same age?—Very nearly the same age.

8220. The value of the land given in exchange in Kincardineshire has been arranged accordingly?—Yes.

8221. *Chairman*.] Are you acquainted with the votes made on Sir John Hay's estate in Tweeddale?—I am no farther acquainted than as I heard the evidence given in the Registration Court.

8222. You cannot state the number?—I cannot; there were several of them lost on technical objections.

8223. Are you acquainted with the votes made on Mr. Beresford's estate?—I believe Mr. Beresford has granted conveyances of parts of the estate in a similar manner, but I do not know any particulars.

8224. You did not advise him in that matter?—I did not; I had no communication with him upon the subject.

8225. Are you acquainted with those made on Sir James Montgomery's estates?—I know the names of the individuals.

8226. Have the goodness to state them, and their descriptions?—They were James Greave, Sir James Montgomery's overseer upon his farm; Peter M'Arthur, his butler; and William Bartram, his gamekeeper.

8227. Were those persons inrolled at the Registration Court?—They were.

8228. Were they objected to?—They were objected to, I believe.

8229. Were the objections sustained?—They were not examined into at all; they came on by arrangement.

8230. By arrangement with the opposite party?—Yes, that the objections were not to be pursued; I presume, to save time.

8231. Mr. *Maule*.] Can you speak as to the transaction which passed between
0.32. Sir

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Sir James Montgomery and those individuals in order to give them the qualification?—I believe they were for love, favour and affection; they were all servants, who had been with Sir James many many years.

8232. *Chairman.*] Were they life-renters?—They were, I believe.

8233. Were they put into possession of those life-rents?—As to that I cannot say.

8234. *Mr. Maule.*] Who was the agent in the transaction?—I think it was Sir James Montgomery's own private agent, Mr. Stewart, writer to the signet, in Edinburgh.

8235. *Sir William Rae.*] Were those given really as a remuneration or reward to his servants?—That was the nature of the transaction; they had been for many years servants; they were given as annuities, in consequence of the long time they had been in Sir James's service.

8236. When did you first grant any of your dispositions?—I granted those dispositions in January 1836.

8237. Can you state any reason that led you to do so?—I was requested by Sir John Hay to do so; he was the Member for the county.

8238. He is a relation of yours?—He is a near relative of mine.

8239. Did he assign a particular reason for wishing you to do so?—He told me that he knew many life-rents of that description had been granted by the opposite party, and that unless we did something of the same kind it would be impossible for him to be returned again.

8240. It was that consideration which led you to execute those conveyances?—That consideration alone; I did it with very great reluctance.

8241. *Mr. W. Campbell.*] Do you know, of your own knowledge, when the first of those life-rents was granted in Peebles-shire?—I do not know it of my own knowledge.

8242. Do you know by report?—I know by report the first person who was inrolled in Peebles-shire, which was Mr. Carmichael, the candidate in opposition to Sir John Hay.

8243. *Chairman.*] When was he inrolled?—I cannot say.

8244. Was he inrolled before 1834?—I cannot say.

8245. Do you know whether he was inrolled on a farm of 200 acres?—I do not.

8246. *Mr. W. Campbell.*] Are you aware whether those qualifications had been created in any other county previous to their creation in Peebles-shire?—Not of my own knowledge.

8247. Had they been previously created in Selkirkshire, for instance?—By report, I heard that an attempt had been made to put on several which had failed; but I speak very much from public rumour.

8248. Did Sir John Hay refer to Mr. Carmichael?—He referred to a batch, if I may so call them; Mr. Carmichael had made over a property called Kibbucks, which he had purchased.

8249. Are you aware that Mr. Kenneth Mackenzie, the son of Mr. Richard Mackenzie, was inrolled on the farm of Ingatestone previous to 1831?—No; at that time there was no contest in the county, and the registration made little or no noise.

8250. Was there any contest, or the appearance of it, in 1834?—I cannot recollect the date when we discovered it.

8251. Are you aware that Mr. Aitcheson inrolled seven persons in 1835?—I believe Mr. Aitcheson did inrol his sons, but as to the date I cannot speak to it; I took no interest in the Registration Court at that time, and it is in a different part of the county where his property lies from that in which mine lies.

8252. Were you aware, of your own knowledge, that any votes had been created by the other party before you made those votes?—I was not.

Mr. Robert Duncan Douglas, called in; and Examined.

Mr. R. D. Douglas.

8253. *Chairman.*] ARE you procurator fiscal for the county of Peebles?—I am.

8254. At what time were you appointed procurator fiscal?—In the month of March or April 1835.

8255. Have you acted as political agent in that county?—I assisted at the Registration

Registration Court in the year 1835; I merely assisted Mr. James Robertson in the way of preparing petitions for warrants, and after that I never had any thing to do in the way of agency.

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8256. For whom did you act on that occasion?—I acted as agent for the parties wishing diligences under the directions of Mr. Robertson, merely preparing petitions for warrants for citing witnesses, &c.

8257. Was that on behalf of Sir John Hay?—Yes.

8258. Did you assist in the preparation of any conveyances, with a view to making votes on Sir John Hay's estate or others, in that county?—I never assisted in the preparation of any conveyances excepting some houses, but none for the Registration Court of 1835; the only conveyance that I made in favour of any party from Sir John Hay was on a house in the North-Gate of Peebles, in favour of the Rev. William Bliss, minister of the Episcopal chapel, Peebles, and presently possessed by him; that was the only conveyance I remember at present; that was made for Sir John Hay.

8259. Sir William Rae.] When was that?—That was in the month of January 1836.

8260. Are you Sir John Hay's private law agent?—I am his private law agent in Peebles-shire.

8261. You are not his political agent?—By no means.

8262. When did you resign that situation?—I assisted in the preparation of the warrants and other things in the court in 1835; after that I resigned having any connexion with political matters.

8263. What led to that?—I did not wish to be connected with political matters, from my situation of procurator fiscal.

8264. In the conveyance of that house, you acted as private agent for Sir John Hay?—Yes, for both parties.

8265. Had you been private agent for both of them before?—Yes, for both.

8266. Chairman.] Have you received the rents of persons who acquired votes on Sir John Hay's estates?—Yes.

8267. For whom did you receive those rents?—I acted as factor for various parties as to rents, and paid them over.

8268. For how many did you act as factor?—I cannot tell at present; I could state that to-morrow by referring to the accounts.

8269. How did you pay over those rents?—I paid them partly to the parties themselves, and partly by remittances through the bank.

8270. Whom did you pay them to at Edinburgh, to the individuals who had the votes, or another personating for them?—Either to themselves or to their known and reputed agents; some parties through the bank, but mostly to themselves.

8271. Mr. Maule.] Can you name the agents to whom you have paid any?—Yes, in the case of Messrs. Dundas, of Arniston; there are Mr. Dundas, of Arniston, Captain Dundas and William Pitt Dundas; I paid the first half-year's rent I drew at Lammas to Mr. John Anderson, a partner of Messrs. Cranston, Anderson & Trotter, writers to the signet.

8272. Sir William Rae.] Did he grant a receipt?—Yes, he did; he signed a scheme of division and statement of the rent.

8273. Has there been more than one half-year's rent paid?—I have paid two; I paid the Candlemas-day rent the other day.

8274. To whom was that paid?—I remitted it to Messrs. Cranston, Anderson & Trotter as a company, and got an acknowledgment from them.

8275. Are you factor in the case of Sir John Hope?—Yes, I am factor for Sir John Hope and his three sons, and Mr. George William Hope, younger, of Loughness, as to their property in Peebles-shire.

8276. You are factor and agent there?—Yes, on the farm of Fairniehole.

8277. Have you paid one half-year's rent or more?—I have paid them two; the first half-year's rent that I drew was the Lammas half-year, payable at Lammas for the half-year from Martinmas to Whitsunday previous; I paid it to Mr. Hugh Hope, the third son of Sir John Hope; I paid him his own share, his father's and his two brothers', for which he granted me a receipt.

8278. Mr. Maule.] To what amount?—The half-year's rent was 29*l.* 10*s.*; each share was 5*l.* 16*s.*

8279. From whom did you get that rent?—From the tenant.

8280. Sir William Rae.] Was that payment made in the same way as in the

Mr. R. D. Douglas. other case?—I paid that personally, the first half-year, to Mr. Hugh Hope ; **this** half-year, I remitted it by a letter of credit through the British Linen Company to Mr. Hope, for behoof of his father and his two brothers.

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8281. Mr. Hugh Hope is a writer?—He is a writer in the office of Messrs. Walker, Richardson & Melville, writers in Edinburgh.

8282. Was the receipt acknowledged?—Yes.

8283. *Chairman.*] Did you print circulars to the different persons for whom you received rents?—I did.

8284. Is it usual for men of business, when they receive rents, to print circulars to the persons for whom they act?—I never did it before.

8285. Why did you do it now?—The reason was that I had a great many clients to whom I had to pay money ; I came to town purposely to pay them ; to sit down and write them a letter would have taken me a great deal of time, therefore I printed a letter.

8286. Where did you desire them to meet you?—At the office of William Stewart, in the Exchequer Chamber in Edinburgh ; he was kind enough to lend me the use of his room, being central.

8287. Can you furnish a list of the persons for whom you received rents, and the amount of the rents?—Yes, I can ; I can produce statements of the rents, with the receipts ; applicable to every farm.

8288. What did you do with the rent after you got it?—I paid it away to the parties for whom I act.

8289. Do you know how your clients paid the interest on the bills granted for the price?—I know nothing at all about that ; I only act as their private agent and factor.

8290. You have not acted as their agent, in any respect, with regard to the paying the interest on the bills which they granted for the price of those subjects?—No.

8291. Do you not know how they paid the interest on the bills they granted?—No.

8292. Mr. W. Campbell.] Did you also act as agent for the 13 gentlemen who hold qualifications on the farm of Kilburn?—Yes ; they hold thirteen-fifteenth parts *pro indiviso* on that farm.

8293. You received the rent from the tenant?—Yes, John Melrose is the tenant.

8294. To whom do you pay it?—To them or their agents on their account.

8295. How is it paid?—Partly personally in Edinburgh, and partly through the bank.

8296. Was that paid at Mr. Stewart's office?—The Lammas rents of 1836 were paid at his office ; all the Candlemas rents have been remitted through the bank to each proprietor of this farm, with the exception of Thomas Scott, who is a farmer at Bonington, near Peebles ; he came and got his own rent ; I sent him a note to come and take it.

8297. There are some other gentlemen who hold qualifications upon the estate of Mr. Mackenzie, for whom you act for Shiphorns and Craighurn?—Yes.

8298. Were those rents paid in the same manner?—Yes, on the Craighurn I act for Robert Dundas, of Arniston, Captain Henry Dundas, Royal Navy, and William Pitt Dundas.

8299. Do you receive the rents for Shiphorns?—I act as factor for the proprietors of Shiphorns, exactly in the same way as for the proprietors of Kilburn and Craighurn ; I took the Lammas and Candlemas rents and paid them over to the respective proprietors.

8300. How much did you receive?—I have a particular statement of the rents made up, but it is not here.

8301. Mr. W. Campbell.] Are you aware how the interest on the bills granted has been paid?—No, in no instance.

8302. Sir William Rae.] Have you acted in connexion with Mr. Mackenzie, the proprietor of the estate?—No, I acted simply as factor for the respective proprietors.

8303. Mr. Maule.] Did it strike you as nothing uncommon that Mr. Mackenzie should have disposed of so much of his property in such small portions?—I never thought much upon the subject.

8304. Did it ever occur to you to be factor on so many small properties in the course of your practice before?—I never have so done before.

8305. Sir

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8305. Sir *William Rae*.] You understood they were freehold qualifications for which you were drawing the rents?—Yes.

8306. Mr. *Maule*.] You understood they were transactions solely for political purposes?—I did not understand any thing about that.

8307. Did you consider them *bond fide* transactions for investment, or did you think they were made for political purposes?—I never was consulted in any way upon that.

8308. You have an opinion of your own, probably?—I merely acted as factor for the parties.

8309. *Chairman*.] Did you pay any of the heritable burthens on those farms or any taxes?—Out of the Candlemas rents I did; the dispositions were deposited with me as agent for them, and I have them yet; by the dispositions the parties are bound in payment of 2s. 6d. annually, in name of feu-duty; that I retained out of the Candlemas rents of the lands of Kilburn, Craighburn, Shiphorns and Fairniehole.

8310. Have you got the deeds here?—No.

8311. Mr. *W. Campbell*.] Was the 2s. 6d. feu-duty sufficient to pay the public burthens and the heritable debts upon this farm?—It is merely the feu-duty allowed to Mr. Mackenzie declared in the dispositions.

8312. You were asked whether you had paid any portion of the heritable burthens?—No, I had nothing to do with the heritable burthens.

8313. Had you any thing to do with the county burthens, or minister's stipend, or parochial burthens?—No.

8314. Mr. *Maule*.] You have paid over to the gentlemen who hold the farm of Fairniehole, by various dispositions, the whole gross rent of that farm, without the reduction of any public burthens whatever?—The first half-year that I acted for them, which was Lammas 1836, I paid the whole rents; this half-year, Candlemas, I paid them the whole rent under deduction, first of the stamp for the receipt, secondly, for the 2s. 6d. feu-duty, and thirdly, five per cent. for my charges upon the whole year's rent, for commission as factor for them.

8315. *Chairman*.] Do you know how the minister's stipend and other charges of that kind were paid?—I do not know, the minister did not send to me for payment.

8316. Do you know whether the tenants paid that?—I do not know; I never heard.

8317. Mr. *Maule*.] Does the tenant hold a lease from the new proprietors; or does he still continue under the former lease?—He is under the former lease, I believe.

8318. Mr. *W. Campbell*.] Are you aware of the length of his lease?—I cannot state that.

8319. *Chairman*.] Did you get the leases of the farm?—No.

8320. Who retained them?—I do not know.

8321. Have you reason to believe that the persons for whom you acted got them?—I have not the least reason for knowing.

8322. Did the tenants ever apply to you for improvements; or have you ever inquired whether they were keeping their farms in good order and complying with the conditions of the lease?—I never inquired at all.

8323. Did you never give any information to the persons for whom you acted upon that subject, or ask for their instructions?—I never consulted with them; I never received any directions from them.

8324. From whom did you receive your directions in respect of the farm of Fairniehole, for instance?—I received my instructions directly in a letter from Mr. Hugh Hope, as acting for himself and the other proprietors; he appointed me by that letter factor for them.

8325. Mr. *Maule*.] Whose property do you consider the farm of Fairniehole at this moment?—I consider it to belong in life-rent to Sir John Hope, of Craighall, baronet, Archibald Hope, advocate, John David Hope, Hugh Hope and William George Hope, the younger, of Loughness, in life-rent, and to Mr. William Forbes Mackenzie in fee.

8326. *Chairman*.] Where you are appointed by any persons to manage a farm for them in which they have a life-rent interest, do you not inquire into the conditions on which the tenants hold, and whether they have fulfilled their stipulations; and do you not consider it part of your duty to be in possession of the leases?

Mr. R. D. Douglas. leases?—I never received any instructions to that effect; if I received them I should act upon them.

18 April 1837. 8327. *Mr. W. Campbell.*] Is it not customary to insert a clause in that country, binding the tenant to work his farm in a proper manner?—It is customary.

8328. Is it not customary also that the person who acts as a factor for the proprietor sees that the tenants properly execute that portion of their lease?—It is a matter to which I should most particularly attend, if directed.

8329. Have you acted as factor on any other property?—I act as factor for a considerable number of gentlemen in the county.

8330. On similar tenures to these?—Yes.

8331. In any of those do you look at the farm to see that the leases were properly executed on the part of the tenant?—Yes.

8332. *Chairman.*] In what cases have you inquired whether the leases have been properly performed by the tenant or not?—I act as factor for the proprietors of an inn at Linton; there is a little land adjoining to it, and I sequestered the tenant, at the instance of the parties entitled in life-rent, the other day.

8333. *Mr. W. Campbell.*] Why have you sequestered them?—For non-payment of rent.

8334. *Mr. Maule.*] On becoming factor for these gentlemen, did you ever look into the lease which the farmer holds from Mr. Mackenzie?—The lease was not delivered to me.

8335. Have you never seen the lease?—No.

8336. You do not know whether there are any obligations or not, or if there are any that they are to bind the tenant to work the farm in a particular way?—No.

8337. Are you factor over any district of property in the county of Peebles, excepting these properties you mention?—I act as law agent for most of the other gentlemen of the county.

8338. You act as factor for no gentlemen in the county of Peebles, excepting those gentlemen who hold those small properties for qualification?—No.

8339. Do you collect rents for any gentlemen in the county of Peebles besides those gentlemen?—No, I collect no rents; generally I make out leases for gentlemen; but I am not factor generally; I have collected rents of grass parks, but farms generally I do not.

8340. *Mr. W. Campbell.*] As you have been in the habit of drawing leases for gentlemen, is it not the invariable practice to insert clauses binding the tenants to work their farms in an agricultural manner?—I generally draw any lease I make according to my instructions.

8341. Do you not in those instructions invariably receive directions to insert clauses of the nature referred to?—Yes.

8342. *Mr. Maule.*] Whose duty is it to see those instructions obeyed?—It is generally the proprietor or his overseer or factor.

8343. You say you are factor to those gentlemen upon the farm of Fairniehole; did it never occur to you to be part of your duty as factor to see that those lands of Fairniehole were properly managed?—I must act simply according to my instructions.

8344. Have you ever visited the lands of Fairniehole as factor?—I have been there as factor.

8345. Did you ever look into the mode in which those lands were cultivated as to agricultural management?—Never particularly; I am no judge; I have no experience in those matters.

8346. Did you ever in your capacity of factor look into the lease of the farm of Fairniehole, in order to ascertain how the tenant was bound to manage it?—I have said before the lease was not delivered to me; I never saw it.

8347. In your character of factor to those gentlemen who hold the farm of Fairniehole, you never have seen the lease, nor inquired what conditions there are in that lease, so as to bind the tenant to manage the lands to the advantage and interest of your clients?—I never saw the lease, as I said before.

8348. *Mr. W. Campbell.*] You are not aware of the obligations either as to the amount of rent to be paid or the other obligations on the part either of the landlord or the tenant?—I know the amount of rent, for I have taken it.

8349. Are you aware whether the amounts of rent they pay to you are those they are bound to pay by the obligations of the lease?—I never saw the lease.

8350. *Chairman.*]

8350. *Chairman.*] How did you become acquainted with the amount of rent, as you never saw the lease?—When I received the deeds and dispositions, I received instructions at the same time, on my appointment of factor, to intimate them to the tenant, which I did; and on the back of the deed a minute of intimation was made, ready to fill up; the amount of the rent was therein stated; and having drawn the rents, and paid them, and no objection being made, I am quite right.

8351. You only know the amount of rent from the docket on the back of the deed?—Yes.

8352. Do you consider yourself acquainted with what are usually understood to be the duties of a man of business acting as factor for an absent proprietor?—I have not had much experience in practice as yet.

8353. Do you know what are usually understood to be the duties of a factor in Scotland, who is also a man of business, acting as factor for an absent proprietor?—Yes.

8354. *Mr. Maule.*] Will you define to the Committee what those duties are, in your opinion?—I would act up to the instructions I received strictly.

8355. *Chairman.*] Supposing you received no particular instructions, are there not general duties which it is understood a person acting as factor ought to perform, if he is at the same time a man of business?—I should act to the best of my judgment.

8356. To the best of your judgment, is it not part of the duty of a factor, where he has no particular instructions, to obtain a knowledge of the leases of the farms upon which he is factor?—It depends upon the nature of his appointment.

8357. Supposing there are no particulars in his appointment, is it not, according to the best of your judgment, a part of the duty of a factor to inquire into the state of the leases on the farm?—Yes.

8358. Have you not always considered that to be a part of the duty of a factor; and is it not known to be so in practice in Scotland?—Yes.

8359. If any absent proprietor were to give you authority to act as factor on any property without any instructions as to leases, would you not conceive it part of your duty to state that to him, and to inquire whether he had any instructions to give you in that matter?—On matters I was unacquainted with, I might ask for information.

8360. Are you aware of any factors appointed on estates to act for absent persons, who do not, without special instructions, conceive it part of their duty to inquire into the state of the leases, the position of the farms, and the mode in which they were managed?—I do not know; I have made no inquiries upon that subject, and cannot speak to that.

8361. Would not any factor who acted in that manner be considered a very negligent person, and acting contrary to his duty?—That is matter of opinion; I cannot speak to it.

8362. Can you give no opinion upon that subject?—I think I cannot, on the question generally.

8363. *Mr. W. Campbell.*] You state that on subjects you do not know, you should feel it your duty to ask your principals what their instructions were. Having stated that, did you not deem it your duty to ask your principals whether they had any instructions to give relative to the fulfilment and implementing of the bargains made under those leases?—I did not say I would feel it my duty; I said I might ask for information.

8364. You were understood to say that, on a point you did not know, you should feel it your duty to inquire?—No, I think I said I might ask for information.

8365. Having no information at all relative to those leases, you did not deem it your duty to ask your principals for any instructions regarding any bargain existing between them and their tenant?—I did not conceive it necessary to ask more information than I had.

8366. *Sir William Rae.*] You understood you were acting as factor for individuals who held those life-rents as qualifications to vote for Members of Parliament?—Yes.

8367. And that the great object was to get payment of that rent, as entitling them to their vote?—Yes.

8368. *Mr. Mackenzie* was fiar of those properties, and all those farms?—Yes.

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8369. If

Mr. R. D. Douglas.

18 April 1837.

Mr. R. D. Douglas.

18 April 1837.

8369. If any life-rents should fall, he comes into the situation, of course, of the life-renter?—Yes.

8370. Do you not consider that he had some interest beyond the life-rent, to look to the conditions of the tenant?—Yes; in the case of Kilburn I acted only for the proprietors of thirteen-fifteenth parts, *pro indiviso*.

8371. The remainder belongs to Mr. Mackenzie himself?—Yes.

8372. Then so far as that is concerned he has a direct interest?—Yes.

8373. In respect of the rest he has an indirect interest?—Yes.

8374. The answer you gave as to direct interest applies only to one part?—To two farms, to Shiphorns and Kilburn.

8375. In the other two cases the life-renters have the whole farm?—They have.

8376. You have said that you have no concern with Mr. Mackenzie, the proprietor of these estates?—None at all.

8377. Were these proceedings on your part *bonâ fide* in the levying those rents from the tenants, and paying them specially to those individuals?—Yes, *bonâ fide*.

8378. You knowing that those life-rents formed qualifications for voting on those farms?—Yes.

8379. No disguise was made upon that subject at all; it was quite open?—Quite open.

8380. In the evidence you have given, you have had no wish to disguise that fact in any thing you have said?—None at all.

8381. Mr. W. Campbell.] Did you draw any of the deeds by which these properties passed from one party to another?—No, I never drew any of Mr. Mackenzie's deeds.

8382. Did you draw any deeds by which property passed in the county of Peebles, in respect of these matters?—Yes, I drew deeds granted by Mr. Spalding in favour of his three sons, in January 1836.

8383. Was that the first deed you drew of this nature?—I cannot exactly say whether that was the first, but I believe it was.

8384. Sir William Rae.] Was that a private client of your own?—I acted as the agent for him privately.

8385. Chairman.] Did you act as agent for him in other cases?—I never did any business for him, except in that one instance.

8386. Who applied to you to act for him?—Mr. Robertson, writer to the signet, instructed me to prepare them, and I acted for the parties, disponees and all.

8387. Is Mr. Robertson political agent for one of the parties in Peebles-shire?—Yes, he is agent for Sir John Hay.

8388. Chairman.] Is he Sir John Hay's ordinary agent?—No, I think not.

8389. Mr. W. Campbell.] Are there any other dispositions you have drawn in similar cases for other parties?—I drew a life-rent disposition by William Turnbull, architect, in Peebles, in favour of his son, James Turnbull.

8390. From whom did you receive instructions to draw that deed?—From Mr. Robertson and Mr. Turnbull.

8391. Did you draw any other life-rent dispositions or other qualifications for political purposes?—No.

8392. In all the deeds you have drawn, by which political qualifications were given in the county of Peebles, you have received your instructions from Mr. Robertson, the political agent for Sir John Hay?—In those cases I did.

8393. You were asked whether there were any others you had drawn, and you said "no"?—No, not any life-rents; I drew a disposition from Sir John Hay to the Rev. William Bliss, in the North Gate, which he possesses at present in fee.

8394. From whom did you receive instructions on that occasion?—From Sir John Hay, and Mr. Bliss.

8395. Have you drawn any other deeds?—I drew a disposition by Thomas Scott Mason, at Stobo, of a subject in the town of Peebles, in favour of James Andrews, serjeant-major of the Scotch Greys; he resides in it.

8396. Was that a disposition in fee?—Yes.

8397. Of what sort of property?—House property and a shop.

8398. From whom did you receive instructions for that?—I acted as agent, partly

partly by directions from himself and partly from Mr. Robertson ; I was agent Mr. R. D. Douglas. for the disponent before that.

8399. Have you drawn any other deed ?—I do not recollect any other.

18 April 1837.

8400. With the exception of the instructions you received from Sir John Hay, you received instructions for the drawing of all the other deeds from Mr. Robertson ?—Yes.

8401. Were those avowedly, as in the cases of the life-rent qualifications you have already described, for political purposes ?—I never was consulted in any way except in the preparation of the deed.

8402. Sir William Rae.] Your view was confined to the preparation of the disposition ?—Solely.

8403. You had nothing to do with the object of the disposition ?—Nothing at all.

8404. Chairman.] You say there was no disguise as to the purpose for which those conveyances and dispositions were made to the persons for whom you have acted as factor ?—None.

8405. Did you understand they were granted for a different object than that for which properties are usually acquired ?—I never was consulted for what object they were made.

8406. If there was, as you say, no disguise, were you not able to understand what the purpose was ?—It was merely rumour that I heard there was no disguise, but I never was consulted as to the purpose.

8407. Were not all other persons who knew any thing of the transaction perfectly acquainted with the purpose ?—I do not know.

8408. If there was no disguise, and you were factor and received the rents and paid them, had not you an opportunity of knowing what was the purpose ?—I believe the purpose to be that of making votes.

Veneris, 21^o die Aprilis, 1837.

MEMBERS PRESENT.

Mr. Maule. | Mr. Campbell.

THE LORD ADVOCATE IN THE CHAIR.

Mr. Robert Duncan Douglas, Procurator Fiscal, Peebles-shire, called in ; and Examined.

8409. Chairman.] HAVE you got the lists of parties for whom you act as Mr. R. D. Douglas. factor ?—Yes.

21 April 1837.

[*The Witness handed in the following State:*]

LIST of PERSONS for whom I was appointed Factor, in the Year 1836, with their respective Properties and Rentals.

I.—LANDS sold in Life-rent, by W. F. Mackenzie, Esq. of Portmore.

1.—The Farm of *Fairniehole*.

Proprietors in Life-rent :

Sir John Hope, of Craighall, Bart.

Archibald Hope, his eldest son.

John David Hope, his second son.

Hugh Hope, his third son.

William George Hope, younger, of Luffness.

Rent, £. 58 sterling, yearly. William Graham, tenant.

2.—The Farm of *Craigburn*.

Proprietors in Life-rent :

Robert Dundas, of Arniston.

Captain Henry Dundas, R. N.

William Pitt Dundas, advocate.

Rent, £. 35 yearly. James Murdieson, tenant.

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3.—Thirteen

Mr. R. D. Douglas.

21 April 1837.

3.—Thirteen-fifteenth Parts, *pro indiviso*, of the Farm of *Kilburn*.

Proprietors in Life-rent:

Henry J. Burn, W. S., Edinburgh.	James Robertson, W. S., Edinburgh.
Sir John S. Forbes, Bart. of Pitsligo.	William Grieve, of Branzholm Park, near Hawick.
George Irving, W. S., Edinburgh.	George Pott, of Todrigg.
Douglas Cheap, advocate, Edinburgh.	James Wedderburn, Edinburgh.
John Forbes, Coldstream Guards.	Charles Scott, Milsington, near Hawick.
William Sharp, W. S., Edinburgh.	Thomas Scott, Bonnington, near Peebles.
Sir David Dundas, Bart., Edinburgh.	

Rent, £.160 for the whole Farm; 13/15th parts whereof, £.138. 13. 4.

John Melrose, tenant.

4.—Three-eighth Parts, *pro indiviso*, of the Farm of *Shiphorns*.

Proprietors in Life-rent:

William Stewart Walker, of Bowland, near Galashiels.	Colonel James Rupel, of Ashysteel.
	Thomas Tod, of Drygrange.

Rent effeiring to 3/8th parts, £.33. 15. Peter Lowrie, tenant.

II.—LANDS and HOUSES sold in Life-rent by Sir John Hay, Bart.

1.— <i>Kingsland</i> ; Alexander Girdwood, tenant: Rent	-	-	-	£. 70	-	-
Garden at Damdale: Rent	-	-	-	2	-	-
Ditto - - ditto	-	-	ditto	2	-	-
				£. 74	-	-

Proprietors in Life-rent:

Lieutenant-Colonel Oswald.	Adam Urquhart, advocate, Edinburgh.
John Borthwick, of Crookston.	George Thomson, of Burnhouse, advocate, Edinburgh.
Robert Scott Moncrieff, accountant, Edinburgh.	Robert Grant, of Kincuth, Edinburgh.
Alexander Pringle, of Whitebank, M. P.	

2.— <i>Bridgelands</i> ; James Sloane, tenant: Rent	-	-	-	£. 34	-	-
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Proprietors in Life-rent:

Thomas Stavert, of Hescott.	Honourable Captain Keith.
A. Hepburn Mitchelson, of Middleton.	

3.—*Moffat's Croft*; the Representatives of the late James Gentle, tenants:

Rent	-	-	-	-	£. 27	-	-
Two Cottages and Garden: Rents	-	-	-	-	8	5	-
					£. 35	5	-

Proprietors in Life-rent:

Lieut.-Col. Hugh H. Rose, Portuguese Service, Edinburgh.	Charles Nairn, W.S., Edinburgh (now dead).
	Archibald Smith, advocate, Edinburgh.

4.— <i>Loanandales</i> ; Thomas Dods, tenant: Rent	-	-	-	£. 36	-	-
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Proprietors in Life-rent:

William Ogilvie, of Chesters.	John Scotland, Glen Douglas.
William Rutherford, writer, Galashiels.	

5.— <i>Bridgelands</i> ; John Hume, tenant: Rent	-	-	-	-	£. 40	-	-
Various Houses: Rent	-	-	-	-	7	10	-
					£. 47	10	-

Proprietors in Life-rent:

James Hamilton Dundas, Edinburgh.	Alexander Cunningham, farmer, Carterhaugh.
James Rose, W. S., Edinburgh.	James Erskine, of Shielfield, Melrose.

6.—Cottage and Offices, R. Duncan Douglas, tenant: Rent	-	-	-	£. 15	-	-
Small Houses: Rents	-	-	-	7	5	-
				£. 22	5	-

Proprietors

Proprietors in Life-rent :

Hugh Bruce, advocate, Edinburgh. | William Bruce, merchant, Leith.

Mr. R. D. Douglas.

21 April 1837.

7.—Field at <i>Tweed Bridge-end</i> ; Thomas Fraser, tenant : Rent	-	-	£.	4	11	-
Ditto ditto and Cottage, James Blyth, tenant : Rent	-	-		7	10	-
						£. 12 1 -

Proprietor in Life-rent : Charles Balfour Scott, W. S., Edinburgh.

8.— <i>Damdale</i> ; A Girdwood, tenant : Rent	-	-	-	-	£.	12	-	-
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Proprietor in Life-rent : Major Norman Pringle.

9.—Land and Houses in <i>Bridgelands</i> , various tenants : Rents	-	-	£.	11	18	-
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Proprietor in Life-rent :

Robert Scott Moncrieff, younger, of Kirkton, advocate.

10.—*Haystown Arms* Inn, Linton : J. Sanderson, tenant : Rent, £. 50. 11. 8., besides Six Kain Hens, three-fourth parts whereof belong in Life-rent to —

Robert MacQueen of Brasfield. | Harry Inglis, W. S. | John Inglis, advocate.

Rent effeiring to three-fourth parts of this property is £. 37. 18. 9., besides a proportion of the Kain Hens.

11.—Various Houses in Linton : Rents	-	-	-	-	-	£.	22	5	-
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Proprietors in Life-rent :

Alexander Cunningham, W. S., Edinburgh. | John Maitland, writer, Edinburgh.

III.—LYNEDALE ; purchased for Sir *John Hay*, Bart., in fee, and—

William Stuart, W. S.	William Halliday, Dumfries.
William Hay, teacher, Edinburgh.	John Waugh, Robertson,
Patrick Robertson, advocate.	and
James Robertson, British Linen Company.	Robert Duncan Douglas.

William White, tenant of the farm ; Rent	-	-	-	-	-	£.	s.	d.
James Spence, tenant of Mansion-house ; Rent	-	-	-	-	-		70	-
							13	-
								£. 83 - -

IV.—LANDS sold in Life-rent, by *William Allan*, Esq. of Glen.

Note.—Michael Eckford is tenant of all the Lands of Glen here mentioned .

1.—Blairierigg	-	-	-	-	-	£.	s.	d.
Beck's Park	-	-	-	-	-		31	10
Valleyfield	-	-	-	-	-		27	15
Shepherd's house and garden	-	-	-	-	-		7	10
Bower Park	-	-	-	-	-		4	-
							7	-
						£.	77	15

Proprietors in Life-rent :

Mark Sprott, of Riddell.	John Sprott, H. E. I. C. S.
James Sprott, of Sprott.	Thomas Sprott, W. S.
Mark Sprott, of Gunkirk.	John Joseph M'Brier, Edinburgh.

2.— <i>Chesterfield</i> ; Rent	-	-	-	-	£.	40.	10.
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Mr. R. D. Douglas.

21 April 1837.

Proprietors in Life-rent :

James Auchinleck Cheyne, W. S.
Alexander Campbell, brewer, Edinburgh.

Thomas Johnston, writer, Edinburgh.

	£.	s.	d.
3.—Brownknow; Rent	10	—	—
Chessfield	6	5	—
Blair's Field	9	15	—
£.	26	—	—

Proprietors in Life-rent :

Alexander Allan, advocate.

Major George Allan.

R. Duncan Douglas.

8410. Do you know of any case of money being received of some persons from some of the tenants in one room, and paid by them over to you in another room, as acting for the proprietors to whom the property was conveyed?—Yes, there was something similar; I shall state to you the substance of it, but I must first inform you that I do not at present remember the proprietors' names or the amounts of the rents, the same not being specially mentioned in the list I have already produced, without having reference to the detailed states of rents, which however I shall put in written, if you please, and it will contain the tenants' names, and the amount of their respective rents.

[The Witness produced the following Statement:]

STATEMENT of the CASES referred to in the foregoing Evidence.

I.—Upper Flat of a House in the Bridge-lands of Peebles, possessed by James Marr:

Rent, £. 4. 10.

Proprietors' Names:

James Hamilton Dundas, Edinburgh.
James Rose, W. S.Alexander Cunningham, Carterhaugh; and
James Erskine, of Shielfield, Melrose.

II.—Northmost Cottage, at Tweed Bridge-end of Peebles, possessed by Andrew Johnston:

Rent, £. 3. 10.

Southmost ditto - at ditto, possessed by William Moffat: Rent, £. 4.

Proprietors' Names:

Charles Nairne, W. S. (now deceased).
Archibald Smith, advocate.

Colonel Hugh Hay Rose, Edinburgh.

8411. Mr. Campbell.] Describe the case?—Sir John Hay disposed certain subjects lying in the south side of the Tweed at Peebles, part of which was possessed formerly rent-free by certain individuals referred to in the states above mentioned. When the dispositions were delivered to me, I received a letter from Mr. Robertson, directing me, as acting for Sir John Hay, to pay to those parties certain sums of money (specifying the amounts) in lieu of rent, he having bound himself to pay those sums to the disponees; when the rent-time came I employed a builder in Peebles, named William Lambert, to collect the small rents, both in Peebles and in the town of West Linton, belonging to certain life-rent proprietors; and I called the tenants, to whom I allude, to my office, where I gave them certain sums, which are specified in the particular state of the rents, and they paid over these sums so received to William Lambert; and after he had collected all the other rents, he paid them over to me in one slump sum, which I divided among the several proprietors, and paid over accordingly.

8412. Chairman.] Were these rents specified in the states?—Yes; they are contained in these states, and are included in the amounts mentioned in the lists of proprietors already produced.

8413. Are they contained in No. 5 of that list?—They are partly in No. 5 and partly in No. 3.

8414. What are the tenants' names?—They are, Andrew Johnston and William Moffat, comprehended in No. 5, and James Marr, comprehended in No. 3.

Martis, 2^o die Maii, 1837.

MEMBERS PRESENT.

Sir William Fremantle.
Sir Hugh Campbell.
Sir William Rae.

Mr. Fox Maule.
Mr. George Ferguson.
Mr. Walter Campbell.

THE LORD ADVOCATE IN THE CHAIR.

Archibald Swinton, Esq., called in ; and Examined.

8415. Sir *William Rae.*] ARE you an advocate?—I am.

8416. In what year were you employed to attend the Registration Courts in Caithness?—Last year, September 1836, the last Registration Court.

8417. You were sent to Edinburgh for that purpose, were you not?—I was originally retained in Edinburgh.

8418. By whom?—By Mr. Horne ; about May or June, Mr. Donald Horne stated to me he wished to retain me for the conservative interest, to attend the registrations at Caithness ; he mentioned that Mr. Trail, the father of the liberal candidate for the county, had been creating a number of votes upon his property, and that he had found it necessary to meet that by granting some life-rent rights over parts of his property ; that was the first communication made to me.

8419. You in consequence went to Caithness?—I did.

8420. Were there any such claims lodged on the part of Mr. Trail?—Yes, I found a large number of claims of that kind ; Mr. Sinclair, of Lybster, had created five or six feu rights in a village of his, and Mr. Trail had created no less than 16 over houses in his village, the village of Castleton.

8421. Were those claims the subject of discussion in the Registration Court?—Of pretty long discussion, not so long as they would have been if they had been investigated *seriatim* ; the discussion related to a principle which affected them all.

8422. What was that principle?—It was chiefly founded on a legal objection which we thought would have had the effect of casting the whole of them, a want of sufficient description of the property in the claim ; that was the first objection that was discussed ; but the cause which led to the rejection of the greater part of them, was that the claimants had not been for the requisite period in the receipt of the profits and issues.

8423. Were any other objections taken to them?—The objections we lodged were stated in general terms, want of property, and of possession for the required period, and not sufficient value ; and the ground on which most of them were rejected was, no receipt of the rents for the requisite period.

8424. Were those votes all of the same nature?—All exactly of the same nature ; those 16 to which I particularly refer, Mr. Trail's, were feu-rights, granted by him over the village of Castleton ; of four of them the titles were dated the 16th of July 1835, and had been prepared for the purpose of the former year's registration, at which the parties claimed, and were rejected in consequence of not having been long enough in possession ; the titles of the remaining 12 were all dated the 30th of January 1836, being the last day, or last but one, on which such rights could be created, so as to give the requisite previous possession before the meeting of the courts.

8425. They were conveyances of property?—Yes, of house property in the village of Castleton.

8426. Separate houses or joint?—Generally speaking, single houses, each occupied by a number of small tenants, work-people of Mr. Trail, in his slate-quarries ; one or two of them were disposed to parties who occupied them themselves ; the others, generally speaking, were disposed to farmers, tenants of Mr. Trail, whose own rent was not sufficient to confer the qualification.

8427. One house was conveyed to each individual?—Generally speaking, I think so ; I do not think any of them had more houses than one ; perhaps they may have had the out-houses and ground attached.

8428. Was there any inquiry as to the price paid?—No, there was none ; and there was no proof in any one case whether they had been paid for by price or by bills ; in fact, that was scarcely necessary, for out of the 16 only six were admitted ;

*Archibald Swinton,
Esq.*

2 May 1837.

Archibald Swinton,
Esq.

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three of those which were admitted were those whose titles had been dated the former year, but of those whose titles were dated in 1836 only three were admitted, and nine were rejected.

8429. Those rejections proceeding on grounds different from the amount of the price paid?—Yes, they proceeded on the want of the receipt of rents, for the requisite period; the way in which that arose I perhaps ought to explain: the system of rents in Caithness is peculiar; the system of what is called forehand rents prevails; the custom of the country is, that the rents from the term of Whitsunday 1835 to Whitsunday 1836, are payable at Martinmas 1835, but are generally not collected till January 1836. Now in almost all these cases Mr. Trail had himself collected and received the rents, either the whole or the greater part of them, down to Whitsunday 1836, having evidently collected them before he formed his intention of disposing the property to others; this was what proved fatal to so many of the claims, that, the greater part of the rent having been collected by Mr. Trail down to Whitsunday 1836, the claimants had not been in possession of the profits and issues from the period of the date of their deeds, which by law it was necessary they should have been.

8430. None of the parties were examined on oath as to these matters?—None of them were actually examined; I intended to have tendered the oath to two of them; I gave notice to Mr. Trail's land steward, a man of the name of Purves, that I should examine him, if necessary, on a reference to oath in the Appeal Court; but it was not necessary for me to do so, because he was rejected. In regard to the others, the six who were admitted, I did not examine them on a reference to oath, both because I thought that was not a popular mode of proof in the county (I think it created a bad feeling against the parties who had recourse to it), and also because I disputed the legality of reference to oath in any case; and I was not without hopes that the Appeal Court would come to the decision that reference to oath was not a legal mode of proof; that was the reason why I did not examine any of these parties on reference to oath. I was also prevented from doing so, partly because I had given them no previous notice that it was my intention to do so; for I had hoped they would all have been rejected on the legal point I referred to, namely, the want of description in their claims. They all claimed in exactly the same words, as proprietor of a lot or lots of ground and houses in the village of Castleton; the whole 16 were in these words. It had been decided in other courts in the south, with the decisions of which I was familiar, that a much more minute description of the property claimed upon was necessary.

8431. *The Lord Advocate.*] They had the property?—They had; but I had been in hopes that that want of sufficient description in their claims would have had the effect of casting the whole of them; that was one reason why I had given no notice of my intention to examine them on oath before the courts met.

8432. *Sir William Rae.*] What description of individuals were the claimants in these cases?—One of them was Mr. Trail's farm steward, Mr. Purves, the person to whom I have alluded; another was an innkeeper in the village, an old servant of Mr. Trail's. The rest of them were rope-makers, blacksmiths, shoemakers, masons or small merchants in Castleton, or persons of a similar rank of life resident in other parts of the county. Most of those not residing in the village, indeed all of them, were, I believe, tenants of Mr. Trail, who did not pay a sufficient amount of rent to qualify as tenants.

8433. Castleton is a small village immediately adjoining to Mr. Trail's residence?—Yes.

8434. What is the name of his residence at Castleton?—Castle Hills is the name; the village is chiefly occupied by persons who work in his slate quarries.

8435. How were these titles delivered into the court; by whom?—They were produced at the court, by a Mr. Snody, the political agent for Mr. George Trail, Mr. Trail's son; they had been drawn by Mr. Manson, Mr. Trail's private agent, but who does not act as political agent, from being procurator-fiscal for the county. Mr. Manson had drawn the titles, and delivered them to the claimants, who had given them back to Mr. Snody, to act as the political agent at the Registration Court.

8436. Who conducted the registration?—Mr. Snody, the political agent for Mr. George Trail.

8437. *The Lord Advocate.*] Were any of the votes life-rents?—None of them, they were all conveyances in fee.

8438. You said you objected to them, I understood, as not having sufficient property, and not sufficient value; how did you distinguish between these objections?

—I mean

—I mean that the proof of the property was not sufficient ; the words, generally, of my objection were, that the claimant was not the proprietor of the subjects on which he claimed, that he had not been for the requisite period in possession, and that the subjects were not of sufficient value ; that was to get at all the objections.

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8439. Did you make that as part of your objection or endeavour to prove it, that these properties did not belong to these men, but to some other person?—We took the objection of want of property, in order to compel the production of the titles ; but the objection on which we ultimately succeeded in casting by far the greater part of them was, that they had not been in the receipt of the rents for the requisite period ; for though their titles were dated the 30th of January, Mr. Trail had received the rent to Whitsunday.

8440. That was a mere general and formal objection, but you did not dispute, in point of fact, that they were the actual proprietors at the time they claimed, though they might not have been the proprietors for so long a period as was required?—Their titles showed that they were proprietors ; their titles were *probatio probata* of that.

8441. Were they infeoffed on their titles?—I think not ; there was no proof of it.

8442. Had you any reason to believe, or did you attempt to prove, that the conveyance was not a real one, but a fictitious one ; that it was not an actual conveyance of the property for ever?—I have no doubt it was a conveyance of the property, for the deeds so bear.

8443. Were you prepared with any proof to show the contrary of its being an actual conveyance of the property for ever?—No.

8444. Then I understand from you, that these were conveyances of the property for ever, not life-rent votes?—Not life-rent votes.

8445. You stated, you did not inquire into the fact whether the money had been paid or not, or in what manner the price was paid?—There was no proof of it.

8446. Did you not consider it of importance to inquire into that fact, or did you think that it would not promote your objections by making that inquiry?—Why, as payment by bill is equivalent by the law of Scotland to payment in cash, I did not think, personally, that any material question would hinge on how it was made. I have since reason to believe that many of these were payments by bills ; one of them I understand, from parties in the county, was not able to pay a price.

8447. You did not think that so material a question as to make it the subject of inquiry in the Registration Court?—I did not in regard to the six ; there were only six admitted ; in the others the cases were soon destroyed on other grounds ; as to those six, I did not make it a subject of inquiry.

8448. I understand then that those who were rejected, were not rejected on the ground that they were not real transactions, or that the prices were not paid, but that they had not been a sufficient time in possession, or that the value was not sufficient?—Either that the value was not sufficient, or that they had not been for the whole six months, from January to July, in the receipt of the profits and issues, to the extent required by the statute.

8449. You stated that you disputed the legality of the reference to oath, and did not wish to make use of that in the proceedings ; on what grounds?—I think there is a great deal of force in the opinion which I know has come to be that of several sheriffs and a great many lawyers in Scotland, that the reference to oath is not a mode of proof that is legal under the Reform Act. One of the sheriffs at Inverness held that opinion ; another declined voting on the question ; the other four found the reference legal ; but even they all differed as to the extent to which they would admit it. The whole subject of the reference to oath, is one which is creating at present a very great difference of opinion in Scotland ; and the grounds on which I was inclined to maintain that it was not a legal mode of proof, were shortly these : that in the first place it cannot be considered admissible in the Registration Courts in the same way as it is in other courts of law, because the Registration Court is not an ordinary court of law ; the sheriff sits there, I apprehend, not in his ordinary capacity as judge-ordinary of the county, but merely as the registering officer appointed by the Reform Act for discharging the duties, which might, just as consistently with the principles of the Act, have been entrusted to the schoolmasters or the sheriff-clerks ; if it had been entrusted to these parties, I do not think it could have been maintained that under the common law they would have been entitled to administer an oath to a party. There have been other decisions,

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that I think go to show that the sheriffs in these courts do not exercise their ordinary jurisdiction. For instance, it has been decided they cannot compel the attendance of a witness; that they cannot imprison a witness for not attending; and it has been decided, that they have not power to compel an agent to produce deeds belonging to his client which he admits he has in his possession; that being the view of the case with regard to their power as an ordinary court of law, the question remains, whether the Reform Act gives them any special power to administer the oath of reference; I confess I think it is extremely doubtful, if it does.

8450. Do these persons who doubt whether an oath of reference may be made use of in the proceedings before the Registration Court, hold an opinion that the parties may not be examined, though not on oath?—I never heard that point argued, but I should think they do not.

8451. Then I understand you to be of opinion they might have been examined on their declaration without being asked any questions on oath?—Upon subsequent consideration and thought on the subject, now I rather think they might; at the same time, the practice in Scotland has hitherto been not to examine parties, except on reference to oath, and I confess, for my own part, the idea of examining them on a declaration, without a reference, had not till lately suggested itself to my mind.

8452. Have you not been acquainted with cases where, in the course of registration, parties have appeared in court, and without being put on oath, have been asked pertinent questions by the counsel and by the judge?—In unobjected cases I have. I recollect one case in Caithness, in which the counsel for Mr. Trail said, "We will not put this man on oath, but will be satisfied with his answering a single question." It was done in a kind of a passing way; I never saw it adopted as a system.

8453. You say there were some votes made on the estate of Mr. Sinclair, at Lybster?—Yes.

8454. Were they all persons resident in the county?—Yes, I believe they were; I think so.

8455. You said others were made on the property at Castleton, belonging to Mr. Trail, senior?—Yes, those are the 16 of which I have been speaking.

8456. Were these all given to persons resident in the county?—Yes, the whole 16.

8457. Then I understand you to say no life-rents were made either by Mr. Sinclair or by Mr. Trail?—No life-rents were made by them, only feu rights.

8458. Made on their property?—No life-rents were made on their property; none.

8459. When persons have been disposed to create votes for the purpose of parliamentary influence, have not these life-rents recently been resorted to?—In some counties they have.

8460. Was not a conveyance of property in life-rent reserving the fee a very unusual transaction in Scotland until after the Reform Bill passed?—I am told so; but I had not much legal experience in Scotland before the Reform Act.

8461. But have you ever heard of any conveyance granted in Scotland except for the creation of votes where a person retaining the fee granted out the life-rent to another?—No, I believe it was not common to be done.

8462. Has the creation of these votes led (you refer to the examination on oath)—has the registration of these votes led to a good many examinations of parties and witnesses on oath?—Yes, it has, a great many parties.

8463. Has that had good or bad effects?—I think bad effects, and I also think effects prejudicial to the right of voting; I think we had an instance of that in Caithness, of a party who had a full right to be inrolled, being rejected by means of the reference to oath; I mean that I think a party whose right is perfectly good and *bonâ fide*, may often, by an able cross-examination by a skilful counsel, be deprived of his franchise.

8464. Sir William Rae.] According to the present custom, parties can be summoned to depone on oath at whatever distance they may chance to be at the time?—The custom is different in different counties; in some counties in the south they hold personal citation to be absolutely necessary; but in all counties in which I have had any experience there have been cases of parties who were either cited or warned by letter that they were wished to be at the Registration Court for a reference, and this practice has always been resorted to without any reference to the distance of their residence, or I should rather say it has been adopted in preference,

preference, towards those whose residence was so distant as to make it extremely unlikely that they could personally attend. *Archibald Swinton, Esq.*

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8465. If they failed to appear after such citation, is that held a sufficient objection to the vote to strike them off?—It has in some districts been so held to a very remarkable extent. I may mention to the Committee a case that occurred in Ross-shire in 1835, where the three Messrs. Gladstone claimed to be inrolled; two of them were attending their duties in Parliament, and the third was designed in his claim as a merchant at Liverpool; they were not personally cited, but a letter was written to them, desiring them to attend at the Registration Court, and because they did not come, they were held as confessed and rejected; that was the decision in Ross-shire, in 1835, confirmed, but not without difference of opinion, in the Appeal Court at Inverness.

8466. This mode of proof, then, may afford unfair means of keeping persons off the roll who have a right to be on the roll?—Undoubtedly, if it is to be allowed that the objector is to be the judge of the propriety of the reference, and that the authority of the sheriff is not to be interposed before the reference is made, the result will be, and is, that parties will be desired to come on a reference, solely in order that their inability to attend may be made a ground of rejection.

8467. In any amendment of the law, have you considered if it would be advisable entirely to exclude reference to oath, or to have it put under certain limitations?—Though I have expressed my own humble opinion, that under the present law it is at least doubtful whether the sheriffs have the power to examine on reference to oath, yet considering the practice that has hitherto prevailed in Scotland since the passing of the Reform Bill, and the expediency and justice of the question, I am far from wishing or thinking it would be expedient that the reference to oath should be entirely excluded. But I think that something similar to the rule which I understand to have been laid down in the Appeal Court at Edinburgh should be generally adopted; it is there held that a party, who is present in court, or who is within a reasonable distance, and is summoned on a reference, must attend; but personal citation is required in every case. But if a party is unavoidably absent, the sheriff is allowed to be the judge whether his excuse for non-attendance is sufficient, and a reasonable delay is granted for his appearance; and if, notwithstanding that delay, he cannot attend, it seems to be the opinion of that court, that the sheriffs, if they are satisfied with the excuse that is offered for his absence, ought rather to admit him, and leave the remedy to the oath which may be put to him at the poll, because they consider that preferable to rejecting him merely on account of his inability to attend; and something of a similar rule, I understand, has been adopted by the Appeal Court at Glasgow.

8468. You consider that would be a most expedient provision to introduce in any improvement in the law?—Yes, but with an additional provision which I think might effect an improvement, and obviate all inconvenience; that in all cases, whether of reference to oath or otherwise, the sheriffs should have the power of finding the objector liable in expenses, if he fails in maintaining his objection; that ought certainly to be the case in the Appeal Court. I think, from reading the statute, it is probably a mere verbal error that confines the power to give expenses to the Appeal Court in the first year's registration; but I think it would perhaps also be an improvement if, even in the inferior court, the sheriff had power, when the objection was frivolous and vexatious, to give the expenses in favour of the party, and against the objector; I allude, of course, to parties against whom the sheriff thinks the objection is frivolous and vexatious.

8469. You have no other suggestion on the subject of reference to oath?—Except, perhaps, I may mention as an additional illustration of the difficulties that attend the system in Scotland the great variety of opinion that prevails in the different districts as to the practical machinery for carrying this reference into effect. In some courts they hold that a party may be examined, first, on a reference in the inferior court, then re-examined again on a reference in the Appeal Court; in other districts they hold that his deposition in the first court must be reduced to writing and marked as a production and founded upon in that way in the Appeal Court. Those are the opposite modes adopted, the first, at Jedburgh, and the second at Edinburgh. Then, again, it is held both at Edinburgh and Jedburgh, that though there is no reference to oath in the inferior court, reference may be made, for the first time, in the Appeal Court. But in Glasgow and Inverness, on the contrary, it is held that unless the offer of reference is made in the inferior

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court none can be made in the Appeal Court. I think the practical difficulties which have arisen, and the difference of opinion which exists, tend at least to throw some doubt on the decisions which have been pronounced, allowing reference to the oath in its present form.

8470. In the Registration Court at Caithness, in 1836, what were the number of claims admitted and rejected on each side?—Seventy-two claims were lodged by the conservative party, 59 of which were admitted either in the Registration or Appeal Courts; 13 were rejected; four of those were double claims; so that in reality we lost just nine cases; the other party lodged 67 claims, of which 32 were admitted, 35 rejected.

8471. Can you state the reasons of the rejections?—In regard to the claimants in the interest of Mr. Trail, they were, shortly, either want of value, the title being of too recent date, or the claimants not having been for the statutory period in the receipt of the profits and issues to the requisite amount. Of the nine conservative claimants rejected, the grounds of rejection were these; two were rejected as the disponees of a reverser in an adjudication, a pure point of law, one on which directly opposite opinions prevail in different districts in Scotland.

8472. *Chairman.*] The property had been adjudged for debt, and they had the conveyance to that property in the event of the debt being paid?—They had a conveyance from the reverser, who was the party who had the right to redeem the property; they had made an offer to the adjudger to pay the debt on the property, but the adjudger happening to be the political agent of the opposite party, threw delay in the way of the redemption till after the Registration Court, in order, it was understood, to prevent their being registered.

8473. On such a right of a reverser, a party might obtain a vote (if it was a legal way of obtaining it) without paying the debt, though the estate was burthened to its full amount?—Yes.

8474. Do you conceive such a vote legal without paying the debt?—Legal, I think it is, according to the strict letter of the Act, but I think the law would be much better if every thing in the nature of a burthen upon the property were to be deducted in estimating the value.

8475. In a legal point of view, you conceive it makes no difference whether the debt is paid or not, or offered to be paid?—No; I think it does not, according to the terms of the Act. I was stating that of the conservative claims rejected, two were the disponees of the reverser in an adjudication; four were joint life-renters, who were rejected on account of a mistake that had taken place in regard to the intimation to the tenants; the deeds had been sent to the country to be intimated to the tenants, which is the necessary formality to be gone through; but the disponent Mr. Horne's country agent (who also acted as agent for these parties) had already, according to the system of forehand rents prevailing in Caithness, received the rents in Mr. Horne's name; and although he subsequently handed over the rents to the claimants, it was held (and I think rightly) that as the rents had been originally received for Mr. Horne, and as intimation of the change of property had not been made to the tenants for some time afterwards, the parties were not, according to the words of the Act, entitled to be inrolled; the two life-renters were rejected after having been examined on oath; and one was rejected for non-appearance on a reference; those were the nine conservative claimants rejected.

8476. Now, how many life-rent votes were admitted?—Of parties claiming as life-renters alone (I will speak afterwards of the persons who claimed on property held partly in life-rent and partly in fee); there were in all 26; one of these was a parish clergyman, who claimed in virtue of his office; two were political agents of Mr. Trail, Dr. Laing and Mr. Snody, who happen to possess life-rents; I think the fee belonged to their wives.

8477. *Mr. Fox Maule.*] You say political agents; was Dr. Laing a political agent of Mr. Trail?—So far, that he was found inadmissible as a witness in the Registration Court, on the ground of agency. I do not know if he is a paid agent; I should think not. The other 23 were life-renters in the conservative interest. Of these 23, 16 were admitted, and seven rejected.

8478. *Sir William Rae.*] What was the condition of life of those life-renters?—Of the 23, all, without a single exception, were persons of respectability and substance; I should say, all belonging to the higher class of life. The 16 who were admitted (I can mention their names and professions, and character), the 16 who were admitted were, Sir John Sinclair's three brothers, Mr. M'Lachlan, banker, in Wick;

Wick; Mr. Anderson, banker, in Thurso; Lieut.-Colonel Campbell and Major Williamson; I believe they are half-pay officers.

8479. Mr. *Fox Maule*.] Are they resident?—Resident in the county. All that I have mentioned are resident, except Sir George Sinclair's brothers. The others were Mr. Davidson, land surveyor, in the county; Major Honeyman Mackay; Mr. Shiels, writer in Wick, political agent for Sir George Sinclair; Mr. William Greive, and Mr. Darling, who are land stewards, one to Mr. Donald Horne, and the other to Mr. William Horne, his brother; Mr. Murdoch, fish curer and herring merchant, in Wick; two gentlemen of the name of Begg, the sons of a small landed proprietor in the county; and Mr. Maclaren, a schoolmaster, to whom Mr. William Horne had given a life-rent of the house he occupied by a deed, narrating it to be done as a reward for his assiduity and ability. Of those 16 the schoolmaster is the only one, I should say, who is not in the higher class of life.

8480. You consider Mr. Walter Greive and Mr. Darling to be both in the higher classes of society?—I think in point of wealth they are. Mr. Greive is a partner with Mr. Horne in his large sheep-farming speculations, and has a large farm of his own in Sutherlandshire.

8481. Is he a proprietor?—No, he is not a proprietor; they are men of substance, both he and Darling. Then the seven who were rejected were Captain Anstruther, brother of Sir Ralph Anstruther, who is a large proprietor in the county; Mr. Robert John Gunn, surgeon, residing in the county, Mr. M'Tavish, solicitor in Inverness; Mr. Sutherland, distiller in Inverness-shire; Mr. James Rose, writer to the signet, Mr. Donald Horne's partner, and two gentlemen of the name of M'Cady and Walter, who were rejected as disponees of a reverser in an adjudication; the case was one of pure law, so I do not know their station in life particularly.

8482. Sir *William Rae*.] Have you mentioned who were the grantors of those life-rents?—Sir George Sinclair was the grantor of the three to his brothers; it was done in implement of his late father's wish. Sir Ralph Anstruther's trustees had sold the life-rent to Captain Anstruther; Mr. Begg, a small landed proprietor in the county, had sold one to his sons; Mr. Donald Horne had granted nine, including the gratuitous one, he gave to Major Williamson; Mr. William Horne granted five, including the one he gave to the schoolmaster; and Mr. Smith, a gentleman residing in Thurso, had granted one; it was the one that was granted to Mr. Anderson, the banker, at Thurso, and it was the life-rent of the house which Mr. Anderson occupied as the bank; Mr. Smith was the proprietor of the house, he sold the life-rent of it to Mr. Anderson, who was the manager for the bank there.

8483. Were those life-rents granted for value?—All granted for value, except those to Sir George Sinclair's brothers, the one to Major Williamson, and the one to the schoolmaster; the others were all for value.

8484. State the grounds of the rejection of those which were not admitted?—The claim of Captain Anstruther was rejected because, from a mistake, the transference of the right had not been intimated to the tenants till February, being a few days too late; and it was held, after a pretty keen legal argument, that that was fatal, and I think it was properly so held; Mr. M'Tavish, the solicitor, and Mr. Sutherland, the distiller, and Mr. Rose, the writer to the signet, who were joint life-renters in one deed, were rejected on the grounds I stated before, in consequence of the mistake that had taken place about the intimation to the tenants, and the receipt of the rent, the rent having been drawn by Mr. Horne's factor in his name before he was aware of the transfer; I think they were quite properly rejected also; and the only other one rejected, except the two to whom I referred as rejected on the legal point, was Mr. Robert Gunn, surgeon, who was rejected, after having been examined on a reference to oath, the opinion of the sheriff being, on his deposition, that that deposition established that his right was not *bond fide*, but nominal and fictitious; those were the words of the objection.

8485. Have you any inaccuracies to correct in Mr. Craufurd's evidence?—Yes, I think Mr. Craufurd has trusted too much to his memory, and has not sufficiently consulted his notes.

8486. In what respect?—In regard to Mr. Gunn's case, of which you are speaking at present, Mr. Craufurd's recollection is quite inaccurate on one or two material points; for instance, he states in two or three places, that Mr. Gunn said that he could not say he expected ever to be able to pay the bill, and that the fact of his never having expected to pay any price for the right was one of the grounds

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of the rejection ; I have had an opportunity since I saw Mr. Craufurd's evidence, of consulting my full notes on the subject taken at the time, and I find that Mr. Gunn stated that he was quite ready to pay the money, that he not only knew he was bound to pay it, but that he was quite ready to do so ; that he expected, at the time he granted the bill, to be able to pay it when called on ; the nearest approach he made to what my friend Mr. Craufurd had supposed he said, is, that he did not know when he might be called on to pay it, but he would not be at all surprised if he was called upon to-morrow ; those were his words, and that when he granted the bill, he had the full means of paying it ; that is one point on which Mr. Craufurd is mistaken in regard to his deposition. I should like to state, in addition, if the Committee have any doubt of the accuracy of my notes, that I shall have to-morrow a copy of the sheriffs' notes, which I have sent for, in order to prove, as I think they will, the accuracy of my recollection of the matter. In regard to another point of Mr. Gunn's evidence, I think Mr. Craufurd is mistaken, indeed I am certain he is, in which he says, that Mr. Gunn admitted he considered himself (in answer at page 269), with reference to the whole matter, so bound that he would use the grantor ill if he voted against him or his candidate. Now that is too strongly expressed ; all he said was, that on consideration he might think that he would use Mr. Horne ill if he voted against him ; he did not say that he was bound ; he did not say that at the time he thought he should use Mr. Horne ill, if he ever voted against him ; but he said "On consideration he might think he would use Mr. Horne ill, if he voted against him." Mr. Craufurd examined this witness for nearly two hours, I should think, and by way of exhausting the reference, I put a few questions to him afterwards ; I asked him, in reference to various political questions of the present day, which I thought the best mode of testing the matter, whether if Mr. Horne were to support a candidate entertaining such and such political opinions he would think he would use Mr. Horne ill if he opposed him. His answer was that so far from it, on the contrary, if Mr. Horne were to support a candidate holding such and such political opinions, not only would he not consider he used him ill, but he would vote against him, and use all his influence against him. Then he added, in reference, as I understood, to the use of his vote generally, that his conduct would be regulated entirely by the political opinions of the different candidates, and not by any consideration of who the party was who was supported by Mr. Horne. I certainly have blamed myself for not continuing this examination further ; I thought that his answers sufficiently established the independence of his vote ; the sheriff unfortunately thought differently ; and the opinion of the sheriff was, that although in the extreme cases I had put he would have opposed Mr. Horne, yet in certain cases there was a certain kind of tie, whether of gratitude or something else, a sort of honorary obligation, so the sheriff called it.

8487. Mr. *Fox Maule*.] Do you mean to give the Committee to understand you firmly believed there was no such connexion subsisting between Mr. Horne and Mr. Gunn as should have induced Mr. Gunn to have waived very considerable scruples in order to have gone along with Mr. Horne ?—I not only believe that, but I know it partly from conversations with myself, and more particularly from reported conversations from others which they had with Gunn afterwards.

8488. From whom did Mr. Gunn hold his vote ?—From Mr. Donald Horne.

8489. Do you believe that Mr. Horne would have delegated that vote to Mr. Gunn if he had not believed that he might calculate on Mr. Gunn's support so long as he, Mr. Horne, took an interest in the Caithness politics ?—I do not think he would have transferred that right to Mr. Gunn, or that Mr. Gunn would have acquired it from him, if they had not been of the same opinion in political matters ; in no cases of this kind that I have ever had any connexion with did I ever know or suspect any other tie between the parties than the general similarity of their political opinions.

8490. Notwithstanding the decision of the sheriff, is it still your opinion that the political connexion between Mr. Gunn and Mr. Horne is not so strong as to induce a general belief that Mr. Gunn would not oppose Mr. Horne's interests in the county of Caithness ?—My opinion, certainly, quite independently of the decision of the sheriff, is, that there was no such tie between them as, in the eye of the law, or in the eye of justice, ought to have prevented his being registered. I dissent, in the first place,—even supposing that his deposition had established what the sheriff supposed it did,—I dissent, in the first place, from the doctrine that a right which is admitted to be perfectly good in law, and which in this case was so good

good in law that three other claimants on the deed along with Gunn were admitted and registered; I dissent from the doctrine that a right so admitted to be good in law can be held to be "nominal and fictitious," which were the words of the objection, merely because the holder of that right is inclined, from gratitude or any other motive, to exercise it in any particular way. I look to the definition of the terms "nominal and fictitious," and to the nature of the honorary tie arising between the granter and the holder of the right, as they are explained by Lord Thurlow and Lord Eldon in their definitions of the law, by which questions of this kind ought to be regulated; I did not think, even supposing the sheriff to be right in the interpretation he put on the oath of the party, that it was a nominal and fictitious right, or that he ought to have been rejected; but, in the next place, I think the sheriff misunderstood the tenor of the party's oath, and I know the party himself was very angry afterwards, when he heard he had been rejected as "nominal and fictitious," and said he had misunderstood Mr. Craufurd, and the sheriff had misunderstood him; he was not examined quietly and by simple interrogatories, far less by written interrogatories, as under the old law, but he was cross-examined with very great ability and at very great length, and the chief object of his cross-examination was to ascertain what his feelings and sentiments were; the point dwelt upon was, that he was to describe his political feelings with regard to Mr. Horne, and I think that the man was confused.

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8491. Who was the sheriff?—Mr. Thompson.

8492. When was he appointed?—On the removal of Mr. Ivory to Bute; I forget when, but I wish to state that though I think Mr. Thompson was mistaken in his opinion in this case, yet I think there cannot be a fairer or more judicious sheriff, or one who does his duty better than Mr. Thompson does.

8493. You have great confidence in Mr. Thompson's general knowledge of the law?—Undoubtedly; but I may be allowed to say that in this case the appeal sheriffs did not concur with him entirely; only one of the appeal sheriffs concurred with him in his reasons for the rejection.

8494. *Chairman.*] Did they concur in the decision?—The judgment of the court was the same; but only one of the sheriffs agreed with the sheriff of Caithness' reasons. Mr. Spears, the sheriff of Morayshire, concurred in the judgment, but solely on the ground of the claimant's ignorance of his power to sell, for he was examined on that point, and said he was not sure whether he could sell his life-rent, since there was nothing about that in the deed; Mr. Spears thought that this ignorance of his own right was fatal to his claim; but he did not go into the question of the tie which the sheriff of Caithness thought existed between him and Mr. Horne. Sheriffs Lumsden and M'Conochie were for reversing the judgment and admitting the claimant; and Sheriff Tytler, the remaining judge on the bench, declined to judge at all, on the ground that he had not heard the claimant's oath, and merely hearing his depositions read over, as was the mode of proceeding at that court, he did not think himself qualified to judge of the matter; Sheriffs Lumsden and M'Conochie took exactly the same view of the law as laid down by Lord Eldon and Lord Thurlow as that I have ventured to suggest.

8495. Describe to the Committee the nature of those life-rent votes granted by Mr. Horne and by his brother?—Those life-rents granted by Mr. Horne and his brother were generally all of them of the same character; they were granted by deeds.

8496. By whom were those deeds drawn and prepared?—I think by Messrs. Horne and Rose, of Edinburgh, conveying either sole or joint life-rents; some were joint, some sole, to the parties I have mentioned.

8497. *Chairman.*] When were they dated?—In January 1836.

8498. Sir *Hugh Campbell.*] Portions of his own property?—Yes.

8499. Sir *William Rae.*] You have been mentioning life-rent cases; were there any cases partly life-rent and partly in fee?—Yes; there were 11 claimants whose property was held partly in life-rent and partly in fee; nine of those claimants were admitted, two rejected; but I should say, that of those nine, three were admitted on the qualification they held in fee alone, and the life-rent was consequently abandoned, and the fourth, though admitted on both qualifications, was proved to have a sufficient quantity of property in fee; and the only reason why he was registered on his life-rent qualification also was from a blunder in the objection, which deprived the opposite party of the power of insisting against it; so that there were just five out of the nine who were admitted, where the life-rent was necessary to eke out the qualification.

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8500. What was the description of the persons, and their names and conditions?—They were, without a single exception, parties of the same class as the 1c! voters throughout the county; they were parties who had been for years in possession, or who had recently purchased village properties in the village of Halkirk, which were not of sufficient value to confer on them the franchise, and consequently they had purchased life-rent rights to a small amount for the purpose of eking out their qualification.

8501. What were their names?—I can state their names and conditions, and the amount of the property they possessed, independently of the life-rent qualification; they were Mr. William Campbell, mason, in Halkirk, who had possessed property in that village of the yearly value of 8*l.* 15*s.*; that is the property he possessed in fee, with a small deduction for feu-duty; Peter Browne, carpenter, in Halkirk, the clear value of whose property, after the deduction of the feu-duty, was 6*l.* 16*s.* 6*d.*; James Grieve, a shepherd, in the service of Mr. Donald Horne, who had bought for the price of 90*l.* 15*s.*, which he paid in cash, house property of the clear value of 9*l.* 15*s.* 6*d.*; John Campbell, tailor, in Thurso, whose property, after the deduction of the feu-duty, was 6*l.* 15*s.* per annum; and Donald Swanston, mason, in Thurso, the clear value of whose property was 8*l.* 5*s.* 9*d.*; those were all the parties with regard to whom a small life-rent qualification was necessary to eke out the property held by them in fee.

8502. Have you explained why they claimed in the double capacity?—The mode of estimating value by the speculative opinion of valuers, is so uncertain, and it is so easy for an objector in counties where political feeling runs high, to procure professional men of his own political sentiments to swear down the value of the properties of political opponents, that it is often necessary and considered expedient, even for parties whose properties are undoubtedly of sufficient value in the estimation of their own friends, to claim upon additional property if they can procure it, in order that their right to their franchise may be secured, and, accordingly four out of those nine claimants did establish that the property they held in fee was of sufficient value, and therefore their claim upon the life-rent was abandoned, and they were registered on property they held in fee alone.

8503. Does any remedy occur to you as to the mode of estimating the value in such courts?—It is a great improvement which has been adopted in some counties, that the political agents for the parties agree, before the court meets, to the mutual appointment of valuers, whose decision is final as to the proof of value; it saves a great deal of both unseemly and objectionable discussion in the courts, and it also saves a great deal of time and expense; but as that cannot in all counties be adopted, I think it would be a great improvement in the law if the sheriff had the power of naming a valuator unconnected with the county, or at least removed above the suspicion of local or political partisanship, whose decision on the subject of value should be final; I think that would be a great improvement; I know no reason why, if the sheriff had such power and the valuator was a public officer, the expense should not be regulated between the parties in equal proportions, or perhaps paid by the public.

8504. Was there a case of Sutherland rejected?—Yes, a man of the name of Sutherland who possessed property of his own of the clear yearly value of 7*l.* 9*s.*; to eke out this value he had procured a life-rent of property in the town of Thurso, the fee of which was sold to a man of substance named M'Pherson for 50*l.*; 20*l.* of it had been paid, and a joint bill granted by this Sutherland and M'Pherson for the remaining 30*l.*, which they had not then paid but which I understand has since been paid; Sutherland was examined on a reference to oath, and was rejected principally because he denied, in the confusion consequent on his examination, that he had granted any bill; I think that is a strong case against the reference to oath, for here was a party who lost his right by declaring that he had granted no bill; that was the ground on which the sheriff principally went; and also another ground of rejection was that he was not aware exactly of the relative nature of his own and M'Pherson's rights as life-renter and fiar; I may mention as a proof of this man's ability to pay the bill, that he has since expended 45*l.* in house property to increase the value of what he before possessed in order to have the qualification.

8505. The claim was rejected in that case?—Yes.

8506. Was it affirmed on appeal?—It was appealed, and in the Appeal Court, Sheriff Spears and M'Conochie were for reversing the sheriff's judgment, on the ground, principally, (especially Mr. Spears) that the claimant in his deposition made

made at the end of it some different statements from what he had given at the beginning, and stated openly enough at the time, that he had been confused and mistaken at the beginning of his examination, and was now anxious to correct the statements. Sheriff Thompson held that what he said first was more likely to be true, especially as during his examination he had been removed whilst some legal point was argued, and had the opportunity of conversing with his friends outside of the court. Sheriff Spears, however, thought that what he stated at the end of the examination was most worthy of credit, and that ought to have been admitted. He and Sheriff M'Conochie were for reversing the judgment; but the other sheriffs held the proof of ownership was not complete, in consequence of the ignorance of the man as to his relative rights with M'Pherson; none of the sheriffs entertained any doubts of the voter's independence. I have no doubt in regard to this case, and that of Mr. Gunn, that if the parties had been re-examined on a reference again before the Appeal Court, instead of the deposition being merely read to the Appeal Sheriffs, that the judgments would have been different. I have no doubt whatever that the judgment in the court below would have been reversed, and probably unanimously reversed.

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8507. Do you consider that would be a desirable course of proceeding, to examine a man on his oath twice?—No, I think it is extremely doubtful how far it is desirable; at the same time it is admitted in that court, and it was not by any means because the Inverness sheriffs were against the system of examining twice that I did not bring the parties there again for re-examination; the reason why they were not re-examined was, that the parties had entered into an arrangement, that as the distance from Caithness to Inverness was very great, no witness was to be brought there, but the notes of the sheriff were to be taken in all cases, as the evidence of what had been proved in the inferior court.

8508. *Chairman.*] Will it not generally happen, if a witness has contradicted himself on oath, if he is examined afterwards he will avoid such contradiction, and make a better deposition?—I have no doubt; in this very case, this party who stated on reference to oath that he had not granted a bill, would have corrected that statement, which he made erroneously in the confusion of the moment, as the bill is in existence.

8509. When a witness has prevaricated on oath, do you think if he is examined afterwards, he will prevaricate again?—I think very likely; but I never saw any thing of prevarication in these courts. I think I have always seen witnesses act very fairly; but I do not think the principle of examining on oath twice is at all advisable; I do not think it ought to be admitted; it depends on the character of the witness whether he will prevaricate.

8510. Will not he be more expert and more careful on his second examination than on the first, and be aware of any mistake he has committed?—Both in Gunn's and Sutherland's case it would have served a good purpose; for I do not think either of them prevaricated. I am certain the opposing counsel, Mr. Craufurd, did not think either of them prevaricated. It has been proved one was mistaken as to the granting of the bill, and the other was misunderstood; and in those two individual cases it would have served the ends of justice if they would have been examined again; but I am by no means in favour of double examinations; though it is admitted in the Inverness court, it is not a desirable practice generally.

8511. *Sir William Rae.*] Have you any thing further to state as to the proofs taken before the sheriff, and as to frivolous and unfounded objections?—I mentioned that the system of making parties' rights contingent on the possibility of their attending, had undoubtedly the effect of making unfounded objections be urged, with the sole hope of depriving the claimant of his right because he could not attend. I may state how strongly that opinion of mine is confirmed by what I saw in Caithness, for not only were all the life-renters summoned to attend on a reference, and some of them brought a great distance for that purpose, and after they appeared in court not examined at all, but many other claimants resident at a distance were, as it appeared to me, on that ground alone summoned in the same manner, evidently on purpose that their inability to attend might be made a ground of rejection. For instance, a gentleman, named John Gunn, a different person from the Mr. Gunn to whom I referred before, who during the currency of an agricultural lease in Caithness, had gone to reside in Glasgow; there was no pretence of any thing nominal or fictitious in his case, but he was summoned to appear; and also a party who was proprietor of property in Caithness, but resided in Berwick-on-Tweed; he was summoned to appear, though there was no pretence to prove that his title was

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nominal and fictitious. I may state, if it had not been for the decision to which the sheriff came, finding that the notice of reference which had been made to those parties was not sufficient, they must, on the principle the Inverness court adopted in Messrs. Gladstone's case, have been rejected merely because they did not appear. While I am on that point I would refer to another mistake in Mr. Craufurd's evidence, where he states (No. 7006, 7084 and 7085), that it was the decision of the Inverness court, that personal citation was necessary for the purpose of reference to oath; that is not the decision of the court; the decision given by Mr. Sheriff Thompson, in which the court agreed, not unanimously but generally, was, that even a letter written to the claimant by the objector before the court meets, desiring him to appear on a reference, is sufficient; nay, that it is sufficient, if a notice of that kind is appended to the printed objection that is served on him; but the notice must contain an abandonment of all other evidence on the part of the objector; and it will not do for the objector to object on such and such grounds," and summon the party to attend, that the objections may, if necessary, be referred to his oath; or to say, "I summon you to attend that I may prove these objections by your oath and other evidence;" the sheriff held that would not do. And it was because the objector in Caithness had in every case inserted the words "if necessary," or the words "and other evidence," that the sheriff would not hold the gentlemen in Glasgow and Berwick confessed, for not coming on such a reference. But if the notice sent to them had contained an abandonment of all other evidence on the part of the objector on that part of the case, the sheriff would have held them confessed. Not only those two gentlemen, but a great number of others who now stand on the roll, must in that case have been rejected, merely because they could not come.

8512. Mr. *George Ferguson*.] In the case of Gunn, was his right set aside because it was presumed he would exercise it under a certain influence; and was the vote otherwise a good one?—Perfectly; three others were registered under the same deed.

8513. It was set aside because he would exercise it under a certain influence?—Yes.

8514. Mr. *Fox Maule*.] That decision was affirmed by the Appeal Court?—The decision rejecting him was, not the decision that he was under influence.

8515. With regard to these life-rents, dispositions or votes made by Donald Horne and Mr. William Horne, I think you stated before, that they were granted, as single and joint life-rents, by those gentlemen to individuals for the purpose of enabling them to exercise the franchise; were they granted solely for that purpose?—I should think so; all of them, who were examined on oath, stated that they had acquired their rights for that purpose.

8516. Is it your opinion that those life-rents were granted solely for the purpose of conferring the franchise on the individuals to whom they were granted?—I should certainly think so, from all I saw.

8517. Was the system of granting life-rents to establish the franchise practised by the opposite party to Mr. Donald Horne?—The opposite party granted no life-rents.

8518. They never had recourse to that means of increasing the constituency?—I have already explained the means they had recourse to.

8519. Mr. *George Ferguson*.] These means?—No; Mr. Trail granted feu rights.

8520. Mr. *Fox Maule*.] Do you consider, in the Reform Bill, it was contemplated that such votes as arose out of those life-rents, should exist after the same Reform Bill had done away with the old system of life-rents in Scotland?—I find life-rent rights specially and *nominatim* recognized by the Reform Bill.

8521. How did the parties acquiring those life-rents, pay for them; those put in by Donald and William Horne?—Mr. Rose, the writer to the signet, had accounted for his to his partner, Mr. Horne, and the two land-stewards, Darling and Greive, had settled for theirs in mutual accounts subsisting between them and their masters.

8522. Are you aware any money passed between Rose and his partner for the value of the vote Rose obtained?—I understood that, in settling the accounts between them, he had paid for the property.

8523. Did you understand that the two land-stewards had also paid Mr. Horne for the conveyance of the life-rent votes to them?—Yes, they had credited themselves with it in their mutual accounts.

8524. Do you know if they were enfeoffed in their life-rents?—No, I think not; I think there were no enfeoffments.

8525. As

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8525. As to the others, how were they paid for?—My belief is, that they were all paid for by bills; but as this is equivalent in law to payment in cash; the nature of the payment could not be gathered from the terms of the deed, and it was only in certain cases the opposite party thought it was worth while to investigate whether the right had been paid for in the one way or the other; my own belief is, that in the other cases there were promissory notes at one day's date, generally.

8526. Have you any reason to know that the bills granted by the other different individuals had been paid up or not?—No, I do not know; I think one of them, Mr. Davidson, the land-surveyor, has paid his. My notes are not very explicit as to Mr. M'Lachlan, the banker at Wick; but I think he had paid his.

8527. Sir William Rae.] Those notes apply to the time when you were in the Registration Court?—The note as to Mr. M'Lachlan does. What I say as to Mr. Davidson is from information since. My impression is, from conversations with Mr. Horne, that he has paid his.

8528. Mr. For Maule.] Do you think any of those bills have been paid up within the last few weeks?—None, that I am aware of, I have had no conversation except in regard to Davidson's; I think he has paid lately.

8529. Chairman.] If a person was wishing to make fictitious votes, would he naturally resort to life-rents, or convey the property to the person and his heirs?—It depends on what is meant by fictitious votes.

8530. Votes for the purpose of creating political influence?—That depends on the nature of the property any one possesses. I should say, with property such as Mr. Trail's village property, the mode he adopted was as easy as any.

8531. Suppose a person has village property, and he merely wishes to create political influence, would it not be more easy for him to grant a temporary right for life-rent than to give it in fee?—I do not think it was so advisable in that county; because Mr. Trail created those votes, of course, for political purposes, and avowed them to be so, and then he had the benefit of all the arguments of Mr. Craufurd against the admission of the other kind of votes; so that, for his purpose, I think the kind of votes he did create were rather the more useful.

8532. If a person is making votes for a political purpose, is it not obviously an advantage, if he only grants them for life, that he grants them to certain individuals whose opinions he knows, whereas if he grants them in fee they descend to other persons with whom he may have no connexion, or they may be sold?—That is one advantage, but if the parties are under his control, it matters little whether they possess the right in life-rent or fee.

8533. What control will he have over a person whose property is sold, or a creditor?—If a party is not enfeoffed, and if he has not paid for the property, which I believe to be the case with regard to some of Mr. Trail's claimants, and probably the case with regard to them all, and if those parties are in a station of life which makes them dependent on him, the same influence which would make them subservient to his wishes in regard to voting, if any such exist, would make them obey his wishes in regard to the disposing of the property.

8534. Could his influence prevent creditors, if he had creditors, from adjudging the right, though no seisin were taken in it?—I believe not.

8535. Was there any circumstance in any one of the votes created by Mr. Sinclair, taken undividedly, which was different from that in other properties that had been acquired in that county before the Reform Act?—No, I think not, so far as I am aware.

8536. Was there any circumstance in any one of the properties conveyed by Mr. Trail, in Castleton, different from that of other properties acquired in that village before the Reform Act?—I do not know what was the nature of the transferences of property in that village before the Reform Act, but I should say the only peculiarity about them is the fact of their being disposed to other parties after Mr. Trail had collected the rents himself down to the Whitsunday following; I do not know if this peculiarity had existed in that village before.

8537. Is it unusual, where the payment of the rent is at the period you describe, for persons to convey their properties after they have drawn the rents?—I should think so, for it shows such a very sudden intention of conveying, especially when it takes place in regard to so many properties.

8538. But, as to the whole system of forehand rents, are you not aware that forehand rents have been very usual, and in former times in Dumfries-shire and Kircudbrightshire and other counties in Scotland?—The system of forehand rents is rather new to me; those are counties I am not acquainted with at all, and the system was new to a good many of the sheriffs too.

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8539. Then, where there are forehand rents, must not the sales usually take place at certain periods of the year after the rents have been received?—That depends on the period of the year at which the sales are made; in these cases the sales were made in the same month the rents were collected, and generally a few days after; if the intention to sell had existed a fortnight or a week sooner, the rents would not have been collected.

8540. Will not the person who sells the estate or property collect the rent at the common time, and that merely makes a difference in the amount of the purchase, it is not a reason for not collecting the rents?—He will certainly collect it at the same time; but if the subject is going to change proprietors, I think, generally speaking, the incoming proprietors would acquire right to the rent during the time they possess it.

8541. That is, supposing it is an afterhand rent; but suppose it is a forehand rent, payable at Martinmas, and that you mean to make a sale a certain time after, would you not collect the rent at the usual period, and make your sale when you found it convenient to do so, or would you delay collecting the rent because you had that intention?—I think that would be more natural for the parties to let rather a higher price be paid, and let the new proprietor collect the rents.

8542. Mr. Fox Maule.] Would it make a difference ultimately as to the price that went into the pocket of the seller?—He would get a larger price; it would be in name of price instead of rent; it would make no difference in the value.

8543. Chairman.] Is it not a great advantage in the management of property to collect your rents punctually at the same time always?—Yes.

8544. And a loss to any proprietor, whether the existing proprietor or any other, to deviate from the usual terms at which he collects his rent?—In the ordinary case, I should think it was.

8545. Have you ever known any proprietor delay the collecting his rent because he meant to sell his property?—No, I do not know that; I have not had experience in buying or selling properties.

8546. Was there any other circumstance but that Mr. Trail had not delayed collecting his rents that made any one of those conveyances and sales differ from other sales of similar proprietors before the Reform Act?—Nothing in the form of the transaction, but there was the declared object of the transaction as explained by the witnesses; the object was declared political, and I do not think that the purchasers were parties who, before the Reform Bill, would have probably purchased those properties.

8547. Were not many of the persons in the villages who acquired properties before the Reform Act in the same condition?—Some, but many of the claimants were farmers residing in the neighbourhood, who, I think, before the Reform Bill, were not in the habit of purchasing properties in villages from three to ten miles distant from their residence.

8548. Has it not been usual for farmers to purchase properties in neighbouring villages?—Not very usual, except where they are so near as to be of some actual service to themselves.

8549. Do not they often settle their sons in these villages, and if they lose their farms, do not they frequently come to reside in the villages themselves?—Undoubtedly they do so; but this is a village entirely occupied, and I should think would remain occupied by the workmen in the slate-quarries; not a village to be chosen by a retired farmer to reside in.

8550. Are you acquainted with the creation of votes in other counties in Scotland?—I know of the purchase of property for the purpose of acquiring a vote in several counties; I have purchased myself.

8551. Has that been by life-rent?—I have purchased in two counties in fee, and I found them such bad bargains that the next time I made a purchase of the kind I purchased in life-rent.

8552. Why did you consider life-rent a better bargain than fee?—Because I purchased in one county house property, for which I gave 400 l. in fee, and I only receive a rent of 17 l. a year, and have the expenses of repairs and various other things of that kind; it is both a larger sum to expend, and the return is smaller.

8553. That is, supposing it property bought for the purpose of a vote?—Yes.

8554. Then your experience is, when property is to be acquired for the purpose of a vote, it is the more prudent mode of doing it to acquire a life-rent than fee?—I think for the purchaser, if he is a young man without family who does not care to sink his money in a life-rent speculation, a life-rent is a pleasanter mode.

8555. When

8555. When persons are desirous to create political influence, do they not consider what they suppose most suitable and agreeable to the purchasers?—Yes, but of course that will differ according to the tastes and situation in life of the purchasers. I know other persons who differ from me, who prefer being possessed in fee; I only express my individual opinion.

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8556. Is not the purchase of fees, and the conveyance of them, more likely to create independent voters than of life-rents, where the vote can only be exercised by the individual to whom it has been conveyed?—I am only speaking from my personal knowledge; I consider the vote I have in virtue of the property I hold in life-rent as independent as those I possess on property held in fee.

8557. It is an answer given in reference to an individual first acquiring the vote; but taking into view, that where it is granted on property it may be transmitted to others, which of the two modes of creating votes do you think most likely to create independent voters?—I have not had experience myself from personal knowledge of the creation of any dependent voters. I never was a party to placing any voter on the roll whom I considered any thing but an independent voter.

8558. Are you aware there is any such thing as a dependent voter in the country of Scotland?—I have heard so; I do not think; I am not acquainted with any.

8559. You, on the whole, believe, there is not any such thing in Scotland?—I dare say there are.

8560. Mr. Fox Maule.] What would you imagine to be a dependent voter?—I have heard an instance of a party, a proprietor, I think, in Roxburghshire (I only heard it from report), to whom a villager in his neighbourhood, a person in the lower ranks of life, was indebted in 100*l.*; he wanted this man to have a vote, and sold him a field for 200*l.*, being about the value of the field, and he made the whole 300*l.* a burden upon the field; I think that man, from his situation in life, having paid no price, and from the property he possessed being burdened beyond its value, was probably a dependent voter, and I can conceive many cases of the same kind.

8561. Why is he more dependent than if burdened with the real value?—The property being burdened above its value, and the whole debt being due to one party, who is in a superior station to the voter; I think that person may very likely be a dependent voter.

8562. The only idea you can conceive of a dependent voter is, where he is indebted to the persons from whom he has got the vote?—That is one that occurs to me at present; there may be others who may not be in such a situation as to exercise independent votes; I think it depends on circumstances.

8563. You do not think the creation of life-rent voters tends to make dependent voters?—I think it might so tend, but in my personal experience I have never been instrumental in placing any on the roll whom I considered dependent.

8564. But generally, do you know whether that system in Scotland tends to make dependent voters, or facilitates the creation of fictitious votes?—After the thorough investigation which takes place before the sheriffs, I do not think a fictitious vote has much chance of being enrolled; I can quite conceive it may lead to placing dependent voters on the roll, but I am not aware of an instance, in my own personal knowledge, in which it has.

8565. Is not a life-renter, who grants a bill for the full value of his life-rent, is he in circumstances that are quite independent, according to the view you have now stated?—It depends on whether he is a person in such a station of life as to make it quite easy for him to pay the bill.

8566. Chairman.] Have you turned your attention to the remedies in the existing law; you have mentioned one subject; has it occurred that enfeoffment may be of value?—I think both enfeoffment and the deduction of heritable debts would tend materially to improve the system of election law in Scotland.

8567. Explain as to enfeoffment, how would that improve it?—It would make the right public; it would prevent the possibility (I hope no such cases have occurred) of a conveyance being claimed upon, which had not been really dated six months before, for I would require enfeoffment for six months; it would cause a great unwillingness on the part of the proprietors of estates to create any great number of life-rents if they knew that the parties in whose favour they did create them must necessarily be enfeoffed.

8568. To recover the property they would require a re-conveyance?—Yes; I have often heard as an objection, of the possibility of parties after they are registered, one party destroying the deed and the other destroying the bill; enfeoffment would prevent the possibility of that, and render a re-conveyance necessary.

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8569. Mr. Fox Maule.] You have heard of cases taking place where the parties destroyed the deed and bill?—I have only heard it talked of as possible; I think it might be met by the oath of possession at the poll; I hope there are no such cases.

8570. Chairman.] Suppose there is an understanding between two parties, one of whom grants a life-rent to another, that he is to hold that according to his wish, and re-convey it when he wishes, would the enfeoffment have any other effect than that of adding to the expense of the proceedings?—As to a re-conveyance, it would only create expense, but it would afford additional security to the creditors of the life-renter; suppose a life-renter in such a case of confidence about to become bankrupt, if he was not enfeoffed he might then destroy the deed, but if he was enfeoffed his creditors would have their right secured.

8571. It is only in the case of his destroying the deed the creditors would be deprived of the right?—Or on the deed not being forthcoming for them.

8572. Would not that be an act of fraud, if a person having obtained a conveyance of any sort, and being indebted to creditors, destroyed it, in order to prevent their having the property?—Undoubtedly.

8573. It is only in cases of intentional fraud that there could be any difference, as I understand you, between the cases where enfeoffment is given, and where it is not given?—I think it renders the right more real; it is more consistent with the general holding of property in Scotland.

8574. Are you not aware that in all former fictitious votes from life-rents it was always on enfeoffment?—Yes.

8575. In these cases enfeoffment was not found to prevent fictitious votes, or understandings that took place as to them?—No, but I do not think the condition of the country is now the same; the mere holding of a superiority, without a receipt of the profits, being, I humbly think, very different from the present system, where the actual receipt of the rents of the subject are required.

8576. Then enfeoffment would not be any guard against a person granting a bill, the interest of which was equal in amount to the profits received?—No, none.

8577. Then would taking enfeoffment be any kind of protection, unless where the person was of so disreputable a character that he would commit a fraud against his creditors, or was in such circumstances that his property was likely to be seized by them?—I think it would create an unwillingness on the part of proprietors to create life-rent votes over their properties; I say so from having heard proprietors, I think, state generally, they would not like this kind of conveyance so well if the parties were enfeoffed.

8578. You have known instances of persons who have granted these life-rent rights, who said they would not have granted them, if the parties were to be enfeoffed?—I do not say I have known such persons; but I have heard it stated generally in conversation; it is my impression parties feel an unwillingness to have the life-renters enfeoffed.

8579. Do you know an actual case of any individual who has granted a life-rent vote, who said he would not have granted it if enfeoffment had been to be taken?—No, I cannot recall any individual case.

8580. Can you speak with any confidence that there are such cases?—No.

8581. Or that it would have any extensive operation requiring enfeoffment?—No, I have only an impression existing in my mind that proprietors would not like the registers to bear record that so many enfeoffments were existing in favour of so many parties on their properties.

8582. In any one case where you have known life-rents granted, do you or not believe they would originally have been granted, though enfeoffment had been to be taken?—I am not sure they would. I have known cases where parties have granted life-rents who, very probably, in the course of a few years, would be disposed to sell the fee of their property. Of course, if a great number of life-renters were enfeoffed over their property, and a special renunciation of the life-rent was required, if a purchaser could not be found willing to take the property burdened with these life-rents, it would make the expense of a sale much greater.

8583. Might not the life-renter, in the cases you have known, have taken enfeoffment if he had thought fit?—Undoubtedly; I believe there is always a precept of it in the deeds.

8584. Was there any understanding in the cases you refer to, that life-renters who had not taken enfeoffment should give up their life-rent, if asked to do so by the

the fiars?—I am not aware; these preliminary matters do not fall under the province of counsel; I know of none but my own case.

8585. You do not state that opinion as founded on actual experience or knowledge of any one case in Scotland?—Why, the life-rent I hold myself was acquired from a proprietor who, in the course of some years, may be inclined to sell his estate; now, though I do not think he would object, and there was no understanding that I was not to be enfeoffed, I never thought of being enfeoffed; I did not think my right would be better; I do not think that a man in his situation would create a great number of similar rights if all the parties were to be enfeoffed; in his individual case, I do not think he would create a great number, whether to be enfeoffed or not; but it occurs to my mind as an argument in favour of enfeoffment that it may prevent parties from granting a great number.

8586. Suppose you had been enfeoffed, would that have made any difference upon you in giving up the life-rent or retaining it, from the situation you stand in now?—None to me, personally, none; but if the fiar wished to sell the estate the renunciation would be a matter of expense both to the holders of life-rents and the granter of them, if he had granted many.

8587. Then in such cases it would be merely matter of expense?—And as the expense was greater it would make parties less willing.

8588. Sir *William Rae*.] You consider the publication of the transaction to be of value?—Very important.

8589. *Chairman*.] In what respect is the publication of value; are they not published as soon as they are enrolled; is it of any value either from the interval of granting the right or the enrolment?—It makes it certain that the date of the deed is the real date of the transaction; it comes in the place of all these questions of intimations to the tenants, and various other matters of that kind, on which parties have often been rejected.

8590. Have you known a case of life-rent where there was reason to suppose it was not the real date the deed bore?—Not of my personal knowledge.

8591. Sir *William Rae*.] It affords more time for the objection to be taken?—Yes, the whole period of six months.

8592. What time now exists for taking objections?—Only the period between the lodging of the claim, which is a few weeks, instead of six months.

8593. *Chairman*.] Do you not think some weeks a sufficient time to inquire into the circumstances of the case?—I do not know; in counties where there is a great deal of business, I have seen the objectors a good deal pressed for time, especially in a distant county from Edinburgh, like Caithness; the time is barely long enough.

8594. Mr. *Fox Maule*.] Can an entail proprietor make any of these life-rent votes to which we have been alluding?—I think that is a question of doubt; there have been opposite decisions given on it; I should say in law he ought not to have the power; I think it is exercising a power which he ought not to have; but I would not like to give a decided opinion.

8595. It is your general impression that an entail proprietor has not that power?—I think in point of law he has not; but I have not very greatly considered it.

8596. Is there not a considerable proportion of the property of Scotland vested under entail?—A large proportion, I believe.

8597. Then, as an untailed proprietor can make life-rents to any extent he pleases, and it is a matter of very grave doubt if an entailed proprietor can do so, does not the system of making such life-rents give great advantage in point of political influence to untailed proprietors in Scotland?—Not more than the system of granting feu rights.

8598. Then as an untailed proprietor can make life-rents to any extent he pleases, and it is a matter of very grave doubt if an entailed proprietor can do so, does not the system of making such life-rents give great advantage in point of political influence to untailed proprietors in Scotland?—If life-rent votes were the only means of supporting political influence it would do so.

8599. Answer the question simply without an *if*, an *and* or a *but*?—In regard to that particular kind of vote it does, if the opinion I have expressed is correct.

8600. Sir *Hugh Campbell*.] Does not the power of creating life-rents depend on the nature of the entail?—Of course it does.

8601. Mr. *Fox Maule*.] Do you mean to say it is any matter of doubt, an entail proprietor can dispose to you a life-rent of any portion of his estate, reserving the fee to himself?—I think it is matter of doubt; I would not like to give a deliberate

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opinion ; but I think it may fairly be argued, that if I choose to take a life-rent from an entailed proprietor, it is a question between him and me ; and that though the heirs of entail of the grantor of the life-rent might upset my right, it it *ius tertii* to an objector ; that might be fairly argued, and I have heard that it has been held so in some parts of Scotland, partly from the mutual understanding of the parties that it was not to be keenly argued.

8602. Do you know any county in Scotland where life-renters are admitted the same on entailed estates as on unentailed estates ?—I have heard that in Roxburghshire or Selkirkshire, life-rents are created by entailed proprietors on both sides ; I only speak from what I have heard.

Jovis, 4^o die Maii, 1837.

MEMBERS PRESENT.

Sir William Rae.
Lord Stanley.
Mr. Fox Maule.
Mr. Divett.

Sir Hugh Campbell.
Mr. Edward Buller.
Mr. Walter Campbell.

THE LORD ADVOCATE IN THE CHAIR.

William Forbes, Esq., called in ; and Examined.

W. Forbes, Esq.

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8603. *Chairman.*] YOU are an advocate of the Scotch Bar ?—Yes.

8604. And you are a proprietor in the county of Peebles ?—Yes, I am.

8605. Have you the conveyance by which your property was conveyed to you ?—Yes, I have—[*the Witness handed it in*].

8606. What is the date of it ?—It is dated the 20th of January 1836 ; that is the date of the formal conveyance, but my father made over the property to me some years before, and I have laid out 3,000*l.* or 4,000*l.* in improving it ; I observe that the first entry in my agent's books, upon consulting them, was at the term Martinmas, 1832, for half a year's rent prior to that ; but, in point of fact, my father did not give me the property until the middle of 1834, when he found I was interested in the improvements I was effecting.

8607. Were there any particular circumstances that led to the conveyance being made in January 1836, instead of a prior or more recent date ?—Yes, there were ; upon the 17th of December I had, with my father's permission, sold a property, called Kilbucho Mill, to a gentleman of the name of Turnbull ; I afterwards found out that Mr. Turnbull acted as the private agent of Mr. Carmichael, the Whig candidate for the county of Peebles ; and it was currently stated in the county that Mr. Carmichael was going to cover this property with life-rent qualifications for the purpose of supporting his interest in the county ; I afterwards found that Mr. Carmichael had, in fact, created 21 votes upon it ; and I was determined not to stand in a bad light in the eyes of the constituency of the county, and I resolved, at whatever inconvenience to myself, to make as many votes as Mr. Carmichael had made on this farm.

8608. Had you had any communication with regard to the making of votes with Sir John Hay, before December ?—Not at that time ; this was entirely a spontaneous act of my own ; afterwards I had some conversation with Sir John Hay ; he said the activity of the Whig party was so great in the county, that unless his friends exerted themselves, he should not be able to secure his return for the county again. That conversation, however, did not affect me, as I would not have made any votes myself had it not been for this sale.

8609. Had Sir John Hay, previous to that time, previous to December, and previous to the sale, proposed that his friends should make votes ?—I had met Mr. James Robertson, the political agent for the county, and Mr. Mackenzie, and we agreed that it was necessary to exert ourselves in order to neutralize this purchase of Kilbucho, more especially as we ascertained that Mr. Carmichael, or his agent, Sir James Gibson Craig, had purchased Sands Park, and we then felt it necessary to take some steps to meet these efforts of the other party.

8610. Lord Stanley.] Is Sands Park an extensive property ?—Very small, about 60*l.* or 70*l.* a year rent.

8611. How many votes have been put on it ?—I think six.

8612. Can

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8612. Can you state what the annual value of the property was that you sold to Mr. Carinichael?—Two hundred and twenty pounds.

8613. On which 21 votes were made?—Yes.

8614. How many votes have you put on your property?—Twenty on a part of it.

8615. Mr. *E. Buller*.] What was the value of that part of the property?—About 220*l*.

8616. *Chairman*.] About what time did this meeting take place with Mr. Robertson?—It must have been about the middle of December 1835, I think.

8617. At what time was Sands Park purchased by Mr. Carmichael?—I cannot tell the date, but it was, I think, about the end of September or beginning of October; but Mr. Robertson, the political agent, can inform the Committee on these details.

8618. Do you allude to any other effort; you said in order to meet the effort; what effort do you allude to?—The Whig party were buying up small properties in the town of Peebles and elsewhere; they were extremely active.

8619. What properties had been bought?—They bought some houses in Peebles; but I think that the Sands Park was the first property that was bought of any consideration; and, in order to neutralize that purchase, Sir John Hay's friends bought the property called Lynedale, of about the same extent and value; Sir John Hay bought the fee of it, but six of his friends bought the life-rents.

8620. Was Mr. Milne inrolled as a life-renter in the year 1834?—Yes, he was.

8621. How was he inrolled?—I was anxious to secure a vote in the county of Mid-Lothian, and I applied to Admiral Sir David Milne, his father; and I told him that if he would give me a qualification in the county of Mid Lothian, I should be happy to give his son one in the county of Peebles; and accordingly that arrangement was effected.

8622. That, of course, has no reference to the purchase of Sands Park?—This took place long before there was an idea of a contest in the county of Peebles.

8623. Lord *Stanley*.] The county of Mid Lothian at that time was strongly contested?—Strongly contested.

8624. *Chairman*.] And you acquired it with a view to the contest going on in Mid Lothian?—Yes.

8625. Was any money paid on that occasion, or how was the business transacted between you and Mr. Milne?—The deeds on both sides bear that 140*l*. of money was the consideration; because you are bound to state in the deed the consideration in money; but, in point of fact, no money passed; it was merely an exchange of land.

8626. And it was a vote in life-rent?—A vote in life-rent in each case.

8627. Mr. *Walter Campbell*.] There was no money exchanged between either party?—None.

8628. Lord *Stanley*.] Were the life-rents in that case calculated with any reference to the value of the lives of the individuals?—In Mr. Milne's case they were calculated at 140*l*. each, because the parties were of the same age.

8629. The fact is, that the parties were of the same age?—Yes.

8630. The usual mode of making this exchange of life-rents is to calculate the difference between the value of the parties' lives, and to pay the balance?—Of course; a fair exchange cannot take place unless the parties are of the same age, except money passes for the difference.

8631. *Chairman*.] In making that transaction in 1834 for the vote of Mr. Milne, did you follow what had been done with regard to life-rent votes in other counties?—Yes.

8632. You are acquainted, then, with similar transactions having taken place for creating life-rent votes in 1834?—I understood that both parties in 1834 had been making a number of life-rent votes; it was considered to be legal, and I believe the sheriffs have been unanimously of opinion that there cannot be the least doubt that the life-rent votes are perfectly good votes under the words of the Reform Act; I never heard a whisper of a doubt expressed on the subject.

8633. Had you occasion to be acquainted with many of such life-rent votes by exchange?—I know nothing of any thing of the kind.

8634. Except subsequently in the case of your own, in 1834?—No, I know nothing of any; there were no life-rent votes created in the county of Peebles, with the exception of Mr. Milne; one on Mr. Carmichael, on which he is inrolled; and one, I think, of a son of Mr. M'Kenzie, of Dolphinton.

8635. Mr. Mackenzie's, of Dolphinton, was in 1833?—I do not know the precise year.

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8636. If

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8636. If it was in 1833, it was the first that occurred; did you attend the courts?—No courts were attended by counsel at that time, there being no opposition to any of those votes till 1835; Mr. Carmichael's and Mr. Milne's votes all got on the roll without opposition by any party.

8637. You cannot state whether Mr. Mackenzie's was in 1833?—I do not know.

8638. With regard to Mr. Carmichael's, do you know the circumstances?—I know nothing of the circumstances, except that I have been told that he has a life-rent qualification in the county.

8639. He is the eldest son of Sir Thomas Carmichael?—Yes.

8640. Did you understand that to be a real transaction, by which he got 200*l.* a year from his father's estate, to which he is heir of entail?—I know nothing of the circumstances; his vote was never objected to, and we have not seen the conveyance.

8641. Are you aware that, in 1835, Mr. Aitcheson created a certain number of votes in favour of his seven sons?—Yes; but that was a transaction that was not carried on with the privity or knowledge of the political agent, Mr. Robertson. It was transacted entirely by Mr. Aitcheson and his private agent. I was not present in the Registration Court when that case was discussed; but the sheriff, I believe, rejected the claims; they were afterwards sustained in the Appeal Court.

8642. Then it was known in the county that Mr. Aitcheson had inrolled his seven sons on 10*l.* qualifications?—Perfectly well; I do not know the amount of the qualification, but I know he succeeded in inrolling his seven sons.

8643. Do you know that, in 1835, Mr. Aitcheson made a conveyance to other five individuals who claimed to be inrolled in that year?—I was not present when the case of the Aitchesons was debated in the Registration Court; I believe that there were claims lodged for one or two individuals, which were afterwards withdrawn at the desire of these individuals.

8644. You were not counsel then at the registration of 1835?—I was counsel during part of the year; but the Aitcheson cases were adjourned to Peebles, about three weeks after the original courts were held, and being obliged to come to England on private business, I was not present when the case was considered in the Registration Court.

8645. Do you know who attended on that occasion?—I think Mr. Patrick Robertson was the counsel, and Mr. Kennedy, Mr. Aitcheson's agent, took charge of the cases at that time.

8646. Of Mr. Aitcheson's cases?—Yes.

8647. Lord Stanley.] You have mentioned the case of Mr. Aitcheson in 1835; in that year had any other case of a similar kind arisen?—I do not think on either side there had.

8648. Not previous to 1835?—No; the contest for the county began in June or July 1835, and of course there could be no preparation for the registration of July and August 1835; as parties claiming must be in possession six months prior to the claim being lodged, there could have been no manufacturing of votes on either side preparatory to that registration.

8649. The registration is in August?—Yes.

8650. At the registration of August 1835, are you aware whether any votes of the same description were put in, beyond those which Mr. Aitcheson put in?—I do not think so.

8651. Chairman.] Then, in 1835, there had been no votes brought forward by the liberal party, because Mr. Aitcheson belongs to the conservative party?—I am not aware that any of the liberals, or any of the other conservatives, made any votes at all; and, as I said before, Mr. Aitcheson's votes were made without the knowledge of the political agent, or Sir John Hay or any of his friends.

8652. Were they life-renters?—I think they were.

8653. In 1836, did Sir John Hay create a certain number of votes in a batch of seven?—I am not prepared to answer this question; I have no documents or notes of the proceedings in the Registration Courts with me; but I know that Sir John Hay and Mr. Mackenzie and one or two other gentlemen made some votes.

8654. Mr. Edward Buller.] You do not know any of the transactions between Mr. Carmichael or Mr. Turnbull and the voters who were put upon the Kilbucho Mill property?—I know nothing about them.

8655. Chairman.] Do you know any thing with regard to the voters that were put on the property of Macbie Hill?—I was not concerned in making any of the votes

votes in the county ; I was present at the Registration Court in the town of Peebles, where Sir John Hay's and Mr. Mackenzie's life-rents were discussed, but I was not present at the Registration Court of the village of Broughton, where Mr. Beresford's life-renters were before the court.

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8656. Can you state how many were created by Sir John Hay ?—I think there were about 24, or some such number as that ; I do not know the precise number.

8657. Or Mr. Allen's, of Glen ?—I think he made about 12 ; I do not know the precise numbers.

8658. Can you furnish the Committee with a list of those that you made ?—William Burn Callandar, esq., of Preston-hall, Mid Lothian ; William Maxwell, esq., of Cardoness, Ayrshire ; Nathaniel Spens, esq., younger, of Craigsanquhar, Fife ; Dr. John Spens, his brother ; Allan Elliott Lockhart, esq., of Borthwickbrae and Cleghorn, Selkirkshire ; Ebenezer M. G. Colquhoun, esq., advocate ; John Bonar, esq., of Ratho, Mid Lothian, banker ; Andrew Bonar, esq., banker, Edinburgh ; James Walker Drummond, esq., of Hawthornden, Mid Lothian, captain in the Life Guards ; John Hall Maxwell, esq., younger, of Dargavel, Renfrewshire ; Robert Blackwood, esq., bookseller, Edinburgh ; James Tytler, of Woodhouselee, Mid Lothian ; Charles Edward Allen, esq., w. s. ; Alexander Milne, captain, R. N. ; James Anstruther, esq. ; William Robertson, esq., younger, of Kinlochmoidart, Inverness-shire ; George Cumming, esq., w. s. ; Robert Dundas Cay, esq., w. s. ; Stewart Baillie Hare, esq., of Calderhall, Mid Lothian, and William Maule, esq., of Killumney, residing in Edinburgh.

8659. In all, how many ?—Twenty.

8660. Do any of those persons reside in the county of Peebles, or are they connected with it ?—I believe the Spenses are connected with it ; but none of the others.

8661. In what way are the Spenses connected with it ?—They are connected with the sheriff, Mr. Wood, and they are distant relations of my father.

8662. They have no other connexion ?—No other connexion.

8663. Did these gentlemen apply to you to sell them the property, or did you apply to them ?—I applied to them.

8664. On what ground did you apply to them ?—Because I wished to neutralize the effect of the sale of Kilbucko.

8665. How was the price of the transaction arranged ?—The price was paid to me in promissory notes, at one day's date ; but calculated according to the age of the parties by the annuity tables.

8666. Were those promissory notes paid ?—They have not been paid ; I have the whole of them in my possession, with one exception.

8667. Were the conveyances all made in one or more deeds ?—Two deeds.

8668. Have you the deeds ?—Of course, I have not got them.

8669. How many were in each deed ?—Ten in each deed.

8670. Have they paid the interest of the bills which were granted for the price ?—The interest would have been paid before this time, but I desired Mr. Robertson my agent, not to make any alteration in the nature of the transaction till my examination was concluded before the Committee, as I did not wish to attempt to amend my case by having any cash transactions on these notes.

8671. Did Mr. Robertson act as your agent ?—Yes, Mr. Robertson acted as my agent.

8672. Is he your ordinary agent ?—No, Mr. Goldie is my ordinary agent ; but as I knew Mr. Robertson was more competent, from his being political agent, to arrange a transaction of this kind, I appointed him for the occasion specially.

8673. Did you consider Mr. Robertson more competent from the circumstance of his being political agent of Sir John Hay ?—Certainly ; and as I knew he must take charge of those cases in the Registration Court.

8674. Did these persons enter upon possession of the property ?—Immediately ; Mr. Goldie had been in the habit of drawing the rents for me ; but as soon as the sale was made to these parties, they appointed Mr. William Stewart, writer to the signet, their agent, and the rents have been collected by him ever since.

8675. Who has managed the estate or transacted with the tenants as to improvements or other matters relating to the possession of that part of the property ?—I have done so ; but, in point of fact, there has been very little improvement on this part which was disposed to these parties ; the great improvements on the property have been on the larger portion, which I have reserved in my own possession.

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8676. What

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8676. What improvements there have been on this part you have superintended yourself?—Yes, I was bound by the terms of the lease, before the transaction was entered into, to make a march fence and to give a certain quantity of lime to the tenant; the march fence was contracted for before the sale was made, and of course I was bound to pay that; and there is now a question pending between me and these life-renters whether this lime which I am bound by the terms of the lease to give to the tenant should be paid by me or them; in the meantime, as I am interested in the improvement of this property, as it must ultimately revert to me or my heirs, I have thought it better that the improvement of the farm should not stop while the question between me and these parties is unsettled; I am bound by the terms of the lease to pay to the tenant in the first place; as to that, there can be no doubt; but whether I am entitled to relief from the life-renters or not is the point at issue.

8677. I think you stated that no one of those bills had been paid to you?—They are all in my possession unpaid, with one exception; that is a bill granted by Mr. Bonar, of Ratho, who died in November last; the bills at that time were in the possession of Mr. James Robertson; and, on wishing to get possession of them myself, I found that he, in the ordinary course of business, had put in a claim to Mr. Bonar's executors for the amount.

8678. *Sir William Rae.*] Is the bill lodged with the claim?—I presume so.

8679. *Mr. Edward Buller.*] In point of fact, has the bill been paid?—No, it has not yet been paid; Mr. Bonar's affairs are on the point of being wound up, and I have no doubt it will be paid, for his executors have drawn a few weeks ago the rent of his share of this property due at Martinmas last.

8680. What was the amount of the bill?—I think about 150*l.*

8681. No application has been made to you to remit any part of the payment?—None.

8682. And there is no intention on your part of doing so?—Not the smallest.

8683. *Sir William Rae.*] Do you know the dates of the bills?—I presume the bills were granted of the same date when the disposition was made.

8684. When was that?—The 29th or 30th of January 1836; I presume the bills were granted at the same time.

8685. *Lord Stanley.*] Mr. Bonar's executors have never started any difficulty to the payment of this bill?—No.

8686. *Sir William Rae.*] There is nothing more than the interest due on the bills yet?—There is just a year's interest due on them; the Committee will observe that, by the custom of that part of the country, the rents are not paid till Candlemas, which is in February.

8687. *Chairman.*] Was the interest of the bills not to be paid till the rents were paid?—There was no stipulation on that point; but I presume that the interest of the bills will be paid but once a year.

8688. Was there any kind of understanding that the interest on the bills should not be paid till the parties had received the rents?—There was no understanding at all; one or two of the parties have come forward, desiring to pay the amount of the bills, but I begged them not to do so till this examination was concluded.

8689. *Lord Stanley.*] In point of fact the life-rent was purchased for 150*l.*, and that 150*l.* is in progress of payment by the executors of Mr. Bonar?—Undoubtedly.

8690. *Mr. Walter Campbell.*] What is the difference between the rent and the interest on the bills?—On the whole bills?

8691. On this one bill; Mr. Bonar's bill?—Mr. Bonar would draw about ten guineas, and the interest of his bill would be about 7*l.* 10*s.*, at five per cent.

8692. You mentioned certain improvements that you are bound to make in this farm, building a fence and lime; what was the amount of rent that you received for that portion of the estate before these improvements were made?—It was an unimproved property, and the whole of it was let to one sheep farmer at a rent of 270*l.* a year; I have divided it into five farms, and built various farm-houses on it, and I have agreed not to take any rent from the tenants for the first five years; and then I enter on the rent at the end of the five years from the day the leases were granted.

8693. At what time did you make this arrangement; how long is it since you entered into this arrangement to receive no money?—It must have been in 1834; but in about two years from this date I and the disponees will come into a rent of 530*l.*; at the end of the lease the rents will be very considerably increased.

8694. Who

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8694. Who pays the rent to the life-renters at this moment?—The Honourable Member I fear is misunderstanding me; I meant to have said that the part which has been disposed to these parties is the old part of the farm which has always paid rent.

8695. The question I wished to ask was, what was the rent of that portion of your farm previous to making this arrangement with the tenants?—It is impossible to tell that, because the whole was let in slump; but I have cut off one half of the property, and disposed it to the life-renters, and for that one-half they draw 220*l.*, while the rent of the whole was 270*l.*, before the division.

8696. Then this half of the farm, was that also included in the arrangement you made with the tenants, that you would receive no rent for five years?—No; this was the old part of the farm.

8697. His rent before, how much was that?—Two hundred and seventy pounds; there is now a new tenant.

8698. His present rent?—His present rent is 221*l.*; the old rent payable by the former tenant was 270*l.* for the whole farm; so that, in fact, there is a great increase of rent, for he pays 221*l.* for about half of it.

8699. And the present rental is 221*l.*?—Yes.

8700. It must have amounted to that sum, to have enabled you to make this number of proprietors?—The tenant had been in possession and paid the rent for one or two years before this transaction took place.

8701. But did he pay that great rise of rent in consequence of the improvements you had promised to make for him, the liming, and so on?—Partly, and partly because there was a new road made through the property, which added greatly to its value.

8702. He paid the 221*l.* to you, previous to the time of your selling it?—Yes.

8703. He did not pay that increase of rent on account of the promise of outlay on the farm?—No doubt that had some effect; I was bound to give him about 180*l.* worth of lime at the lime-kiln.

8704. Lord Stanley.] Your principal outlay was on the other part of the farm, which was cut off and not disposed to those parties?—I spent 3,000*l.* or 4,000*l.* exclusively on that part of the farm which was not disposed to these life-renters.

8705. Did we understand that the 530*l.*, on which you expect to enter at the expiration of two or three years more, was to be the rent of the whole farm, or the part not disposed?—The whole property, including what has been disposed.

8706. You did not calculate any increase on this 220*l.*?—There can be no increase on this till the end of the 19 years' lease.

8707. Mr. Walter Campbell.] The point at which I want to arrive at is this, as I understood the rental of the whole farm included the largest half which you retain in your possession, that the rent of the whole was 270*l.*?—Yes.

8708. What I want to arrive at is this, the half of 270*l.* is 135*l.*, I find the farm has risen, the whole farm has risen to 500*l.*?—The whole arable land is on this part which has been disposed to these parties; when I began my improvements on the moor, there was not an acre in cultivation there.

8709. Chairman.] When you made this transaction and received the bills, was it understood that those bills would be paid up if nothing extraordinary occurred, or that they would remain unpaid?—I told the life-renters at the time, "If it is not convenient to you to pay the money, you may pay it in bills; but you may pay the money if you choose;" and I told them they would enter into possession and draw the rents. It was a perfectly *bonâ fide* transaction.

8710. Was it part of that understanding that they were to be called on by you to pay those bills or not?—I told them they might be called on at a moment's notice to do so.

8711. Lord Stanley.] With respect to each party, if the bill remained unpaid at his death, the executors would be called on, and clearly liable to pay it?—Yes; allow me to add, that this claim against Mr. Bonar's executors was given in about six weeks before Mr. Horsman intimated any intention of calling for this Committee; that piece of business had no reference to this inquiry whatever.

8712. Chairman.] In the event of their death, had you any security for the payment of the bill?—None, I could only make the claim against the executors, as any creditor would be entitled to do.

8713. Do you think they expect to be called on to pay those bills during their lives?—I cannot say what was in the breast of those parties; but I explained to them that they might either pay money or grant bills, as they chose. There was no understanding that they were not to be called on to pay their engagements.

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8714. Lord *Stanley*.] Bills at one day's date, bearing interest?—Promissory notes.

8715. *Chairman*.] Then the interest of those bills was less than the amount they were to receive?—On the whole transaction it was so; the bills which I possess amount to 3,600*l.*, and the interest of those bills at five per cent. is 180*l.*, and the rents drawn amount to 221 *l.*; of course I lose the difference.

8716. Mr. *Walter Campbell*.] Who pays the public burthens?—That is provided by the deed of conveyance; I do not recollect whether I or they were to do so.

8717. *Chairman*.] You never stated any period when they would be called on to pay those bills?—Never.

8718. Did you point out to them that they might be called on to pay at any moment?—We had very little conversation about the bills at all; I called upon these gentlemen, and I requested them, as a personal favour to myself, to take votes, and I desired them to wait upon Mr. James Robertson, my agent, and that he would arrange all the details with them; they, I afterwards understood, did call on Mr. Robertson, and he explained the whole matter over to them as he informed me at the time.

8719. In the case of exchange of votes between you and Mr. Milne, in 1834, have you drawn your rent from the property which was conveyed to you in life-rent?—I appointed Messrs. Greig and Morton, as my agents, to manage my part of this property. Sir David Milne had disposed the property in life-rent jointly to David Milne, advocate, Captain Alexander Milne, of the Royal Navy, his two sons and myself; and I called on Messrs. Greig and Morton, before I came up, to furnish me with a copy of their account; and I hold in my hands an account current in which they have brought out a balance due to us for this property of 93*l.* 7*s.* 9*d.*, after debiting themselves with 8*l.* 10*s.* 6*d.* for business done on our account.

8720. Has Mr. Milne received the rents of the property which you granted to him in life-rent in the county of Peebles?—Yes, he has.

8721. How did he draw them?—Mr. Goldie was appointed by him his agent in the year 1834, and he has paid it over to him since that period.

8722. Lord *Stanley*.] Is Mr. Goldie still your agent?—Yes, he is.

8723. *Chairman*.] Have you acquired votes in any other county besides that of Mid Lothian?—Yes, I have acquired a vote in the county of Roxburgh, and a vote in the county of Selkirk; and I was possessed of a vote under the old system in the county of Elgin.

8724. Are those votes in the county of Roxburgh and Selkirk life-rents?—In the county of Roxburgh I am one of the joint proprietors of the lands of Temple Hall, which is a property in fee which I purchased in January 1834.

8725. What is the amount of your interest in that?—Enough to qualify me; it is a property burthened with debt.

8726. It is a fee in property burthened with debt?—Yes.

8727. Did you pay any thing for it?—I paid 100*l.* for it.

8728. Lord *Stanley*.] In cash?—Yes.

8729. *Chairman*.] You mentioned another county?—I have acquired a vote from Mr. Walker of Bowland, in the county of Selkirk, over the lands of Crossleigh.

8730. When did you acquire that?—In January 1835.

8731. Is it a life-rent?—Yes, it is a life-rent vote.

8732. Did you pay any price for that?—I granted a promissory note for 155*l.* in payment.

8733. Have you paid up that promissory note?—I have not, but I intend to do so.

8734. Was it understood when you acquired it that you would do so, or is it since?—I have formed the intention in my own mind, but I have had no communication with any person on the subject.

8735. Have you received any rent from that property at Crossleigh?—I gave Mr. Craig, of Galashiels, a written mandate to collect the rents due at Lammas and Candlemas last, and of course he will account to me for them.

8736. Was the interest of that bill paid?—No, not yet.

8737. How long is it since the bills were granted?—About a year.

8738. And no interest has been paid?—No; but of course that will be settled whenever I go home.

8739. Who is Mr. Craig?—He is a writer in Galashiels.

8740. Is

8740. Is he Mr. Walker of Bowland's agent?—I do not know; Mr. Horne asked me to give a written mandate to Mr. Craig, and I did so.

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8741. You consider Mr. Horne the political agent for the conservative party in that county?—Yes.

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8742. Mr. *Edward Buller*.] You hold property in various counties for the purpose of having a vote in those counties?—Yes.

8743. You appointed agents to receive rents for these properties?—Yes.

8744. On what terms do the agents collect for you?—I have received an account rendered by Messrs. Greig and Morton, and I observe they charge me as they would charge any client in the ordinary way of business, and I presume that Mr. Craig will also charge me whenever he renders his account.

8745. To what per centage do the charges for agency amount on the rents?—I really am not competent to answer that question; I know, in the collection of my own rents, that Mr. Goldie charges me nothing.

8746. Lord *Stanley*.] There is a charge for management there?—Yes, he charges for writing letters demanding rent, 3*s.* 4*d.*, which he puts to my debit.

8747. Mr. *Edward Buller*.] To what do the charges of management amount on that account?—Eight pounds ten shillings and sixpence; and there is a charge of commission on the principal sum, amounting to 5*l.* 4*s.*

8748. What was the sum collected by that agent on your account?—A third of 93*l.* 7*s.*

8749. In what county was that property?—Mid Lothian.

8750. Mr. *Walter Campbell*.] You mentioned a certain charge for management; is it not customary in most Scotch leases that the tenants are bound to work their farms in a particular manner?—Yes.

8751. Who has the charge of seeing that they do so?—I take no charge of that; I acquired the property for no other purpose but to obtain a vote; I leave that matter to Mr. Craig.

8752. It must be a matter of some little consequence, because you receive a certain quantity of rent for the money you lay out; if that farm is improperly worked, the land will cease to be of the same value, and then you will not receive so much money?—I must take my chance of that, but I rather imagine that as Cross-leigh is a pastoral farm, I cannot suffer, except from a change in the markets.

8753. Mr. *Fox Maule*.] Are the Committee to understand, that you hold a vote in Selkirkshire, for which you gave a bill for 155*l.*?—Yes.

8754. On which, at the end of twelve months, you have paid no interest, and that you have not derived any benefit from the subject on which you are inrolled?—I have not paid the interest on the bill, because I have been up here, and because I avoided making any payment lest it might be said that I wished to make my case better before this Committee; but I know that Mr. Craig, of Galashiels, has received the rents, and whenever I shall call on him to account I shall receive payment of the rent.

8755. Lord *Stanley*.] Your authorized agent has derived a direct return from the subject?—He has collected the rents.

8756. Mr. *Fox Maule*.] He has intimated the collection of rents to you?—He has intimated it through Mr. Horne.

8757. Up to the present moment, you have yet had no settlement for the interest, or upon the subject on which you are inrolled?—There is no settlement, but there is a sum placed to my credit in Mr. Craig's books; if I had been in Scotland I should have drawn it; my agent has received the rents.

8758. *Chairman*.] You mean by your agent, Mr. Craig?—Yes.

8759. Mr. *Fox Maule*.] Does he receive the rents half-yearly or yearly?—He collects the rents twice a year; but I told Mr. Horne that it would be more agreeable to me in a matter of so little pecuniary importance to have a settlement only once a year.

8760. Mr. *Walter Campbell*.] The stated account that you have shown is a stated account on the property acquired from Sir David Milne?—Yes.

8761. And you gave Sir David Milne's son a life-rent qualification?—Yes, before there was a contest in the county of Peebles.

8762. In that stated account there is a balance in your favour of 93*l.*?—Yes.

8763. Your share of that is how much?—A third of that sum.

8764. Have you any means of knowing what different balance there is between the rents drawn by Mr. David Milne on your property, and that which you draw at this moment?—I presume that the balance is nearly the same, as the little property which

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has been disposed to Mr. Milne, pays exactly ten guineas of rent. The object of the transaction was, that as Mr. Milne's agent and mine were the same, we should acquire an equal quantity of land from each other.

8765. *Chairman.*] Does Mr. Craig act as agent for the proprietor of Bowland, or for other persons who, like you, have acquired votes on that property?—I do not know who Mr. Walker's of Bowland's agent is, but I believe Mr. Craig acts as the agent of myself and the other parties who are associated with me in this property.

8766. How many others are there?—I think that there are four others.

8767. Sir *William Rae.*] I think you said you managed that property for your father?—Yes.

8768. Your father is a Judge of the Court of Session?—Yes.

8769. When did you acquire that property from your father?—About the middle of the year 1834.

8770. Was it with any view of making these votes, or those proceedings to which you have now alluded?—I never thought of making those votes till after the sale to Mr. Carmichael.

8771. Such subject was never in discussion between you and your father?—Never; he was perfectly ignorant of the making of these votes, and I was extremely annoyed to find that he was attacked in the newspapers for having made them; and at last I thought it was right to speak to Mr. George Rutherford, the Whig agent, a very fair straightforward man, and I afterwards wrote him a note stating how the fact was, and if the Committee will allow me I should like to read his reply in writing.

[*The Witness was ordered to withdraw.*]

On his being again called in; the Chairman stated, that the Committee were of opinion that Mr. Rutherford's letter could not be received, but that the Witness might make any statement on the subject, and he might refer to that subject having been satisfactorily settled, and might state that he had a letter from Mr. Rutherford, which he could produce, expressing such opinion.

Witness.] Mr. Rutherford, in the letter which I have in my hand, expressed himself perfectly satisfied with my explanation, and was convinced from it that Lord Medwyn had no knowledge of the making of these votes; and farther stated that it was a matter of no earthly consequence the circumstance that I had not been enfeoffed in the property for some years, or that I had received my disposition only a short time prior to the making of these votes.

8772. *Chairman.*] At what time was Lord Medwyn first aware that you had made those votes?—I mentioned it to him within a month after the disposition was granted, I was anxious to say as little about the making these votes as possible, as it might have transpired that I had made them.

8773. But he did not know of it at the time the disposition was made?—He did not know it till some time after the disposition was made.

8774. Have you any thing further to say on that point?—No, nothing further on that point.

8775. The Committee do not wish to restrain you in any statement you make yourself?—I have nothing further to say, except that I should like to mention that my sole reason for making those votes was the sale of Kilbucho to Mr. Carmichael.

8776. Sir *William Rae.*] You have stated that you are a member of the Scottish Bar, and practise before the Court?—Yes.

8777. You have been in the habit of attending the Registration Courts?—I have attended the Registration Courts in the counties of Dunbarton and of Peebles.

8778. Will you give the Committee any information you can with regard to the facilities afforded by the Reform Act for the formation of colourable votes; as regards the tenancy clause, what do you think of that?—It strikes me that the joint tenancy votes are really in accordance both with the letter and the spirit of the Reform Act, and they afford little or no colour for the formation of fictitious votes, particularly in the south of Scotland, where there are generally pastoral farms, whose rent generally amounts to 300*l.* or 400*l.* a year. The immemorial practice in that part of the country has been for the tenant to assume, as a partner in the profits and in the management of the farm, his sons or nephews living and labouring on the farm with him; and I conceive it quite fair that these persons should be entitled to be put as joint tenants in the lease, so as to qualify them for the franchise; more especially

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especially as such assumption is advantageous to the landlord, because these joint tenants go to increase his security for the payment of the rent, as they are all liable for the full rent.

8779. You do not think it wise to make any alteration in the law on that subject?—No.

8780. Lord Stanley.] Are the Committee to understand you to say, that from time immemorial it has been the custom to assume relations into the management of the farm, who *bond fide* had their separate share of the profits?—Yes.

8781. Should you make a distinction with regard to the vote being colourable or not, if such a division of the profits were not made between the parties in regular proportions?—Of course it would make a great difference.

8782. Is that the point which in cases of these joint tenancy leases is investigated before the courts in Scotland?—Most narrowly sifted in the Registration Courts.

8783. And, according to the existing practice, unless the profits of the farm be proved in proportion, the vote is not admitted?—It is not admitted; the criterion for the acquisition of the franchise is the payment of the rent and occupation, and both occupation and payment of rent to the landlord must be satisfactorily established.

8784. What are the means afforded for proving the receipt of a proportion of the profits?—The lease and receipt for rent are generally produced, or the landlord is called as a witness, and he states the arrangement which has been entered into between the tenants and himself; or, if the objector to the vote is not satisfied with the sufficiency of that evidence, he may put the matter to the oath of the party claiming.

8785. The evidence of the landlord would only go to show that there were certain names on the lease, and they were all liable for a proportion of the rent, or all jointly for the whole rent?—Yes.

8786. What would be the proof that each of the parties separately received, for their individual advantage, a certain proportion of the profits?—That must often be a matter of family arrangement between the parties, and that matter must be ascertained from the evidence of persons, who either are joint tenants in the lease with the party claiming; and if that evidence is not satisfactory, a reference may be made to the oath of the party claiming.

8787. You consider the ascertaining of that fact is material to the decision whether the vote is good or not?—Certainly; the claimant must have an interest in the farm.

8788. Is there any other mode, according to the law as it at present stands, but the oath of the party, by which you can ascertain that fact?—No other than the evidence which I have already stated.

8789. Has it been of frequent practice in the counties you are connected with to put the parties on the oath?—I have seen it done several times; I recollect the case of one of Sir Thomas Carmichael's tenants claiming as joint tenant; we did not put the man on his oath, but I asked him in open court as to his interest, and he said he did not derive a share of the profit; the claim was immediately withdrawn.

8790. Could you suggest any more satisfactory way of obtaining the evidence than the oath of the party interested, which more or less must offer a temptation to perjury?—I do not see what other evidence there can be, except the evidence of the parties who know the transaction; the landlord, his factor and the parties in the lease.

8791. In point of fact, do you believe that the parties have come forward in many instances and sworn to a qualification of this nature, to which they were not *bond fide* entitled?—I do not think so.

8792. You believe the oath has in these cases had the effect of deterring those parties from coming forward who had not a *bond fide* share?—I never knew an instance to the contrary; I have seen cases in which we have cited parties to come forward and depone as to the state of their interest in the lease, and they have either not appeared, or they have spoken truth if examined.

8793. Then you have no suggestion to offer with regard to this class of voters, either as to the alteration of the qualification, or as to the improvement in the proof of the qualification?—None.

8794. Mr. Fox Maule.] What reason have you to suppose they have spoken truth when they have been examined, otherwise than the mere assertion of their own on oath?—The claim in many instances is given in by the political agent,

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without any concert with the party whose name is in the claim; perhaps he may not have heard of this claim at all, and then, when he is called to appear in the court, in order to meet the plea of the objector, he comes forward at once, and says "The objection is a good one, because I really have no interest in this farm."

8795. Do you suppose a party, whose name is inrolled, and whose name is given in as a claimant, and who is to be examined before the court, comes unprepared by the agent who has sent in his name as claimant?—I should think not.

8796. Without any knowledge of the ground upon which he appears as claimant?—I have never seen any appearance of perjury in that class of voters, or any misstatement as to points of fact.

8797. Is it not natural that the agent, putting in claimants for his own party, should hold communication with the parties who are to be examined at the Registration Court, as to the nature of the claim which he has lodged for them?—Undoubtedly the agent will ascertain generally what sort of evidence is to be given, but no agent of character will bring forward a man, who, he is aware, has no right to vote, the question of possession under a lease being the point in dispute.

8798. What is your opinion, as an advocate, with regard to the taking of evidence in the Sheriffs' Courts with reference to oath?—I believe some doubts have been expressed whether the sheriff has the power of administering the oath to parties claiming; but I apprehend that he is entitled to extricate the jurisdiction given him by the Reform Act, which has given him full power to sift all cases narrowly.

8799. Has that question ever been raised in any of the Registration Courts in which you have been in the habit of practising?—It has not.

8800. And the sheriff has always acted upon the assumption that he is justified in taking evidence with reference to oath?—Always; it is always done, and it has never been objected to by either party in Peebles-shire.

8801. Mr. *Edward Buller*.] You talked of putting the oath?—The oath of reference.

8802. When you talk of putting the claimant to the oath, do you mean by that, putting him to an oath in a particular form?—Not the least; the oath of reference embraces a complete and searching examination of the whole circumstances of the case, as may exist.

8803. The oath to tell "the truth, the whole truth, and nothing but the truth"?—Yes.

8804. And upon which the examination may enter into all the details?—Yes; the oath of reference is looked upon in Scotland as a judicial compromise of the dispute between the objector and the claimant, and all other evidence is excluded; it comes in the place of all other evidence, and the case of the objector, and the case of the claimant, stands or falls by the effect of that deposition.

8805. The evidence given under that oath?—Yes.

8806. There is no limit at all to the questions that may be put to the witness under that examination?—All competent and legal questions such as can be put in any civil court may be asked.

8807. Mr. *Walter Campbell*.] I believe in no Registration Court in Scotland has the sheriff the power of laying expenses on the party who brings forward frivolous and vexatious objections; have you ever seen any such thing in any of the courts that you have practised in?—I have never seen any expenses awarded.

8808. Are you aware that it has ever taken place in Scotland?—I cannot speak to that point.

8809. Sir *William Rae*.] Confine yourself to the question of life-rents as calculated to lead to colourable qualifications?—I think life-rents may no doubt be colourable, provided men acquire them who have neither funds nor credit; but this is a matter which is narrowly sifted in the Registration Courts; and if a party has not got a proper title to the property, and does not appear to be the *bonâ fide* possessor of the property, he may be rejected, and many have been rejected on this ground in the Registration Courts.

8810. *Chairman*.] You stated in that answer it might lead to fictitious votes, provided the parties have no funds and no credit; how is it ascertained whether the parties have funds or credit?—It cannot be directly ascertained; it can in general only be inferred from their station in life, that they are possessed of funds. I should apprehend that the list I have read, of gentlemen acquiring life-rents from me, would afford an answer to this question, because it is evident that their bills, to a much greater amount than have been granted to me, would be discounted by any bank in Scotland.

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8811. Would it be an objection to a vote that the bills for the property were granted by persons whose bills would not be discounted by banks?—I confess it is not very easy to discover what a man's funds are, or whether he is a man able to pay down cash; but if one saw a list of 20 people whose credit was not in high repute, one might be led to imagine that the political agent might have advanced the money for them.

8812. But would the sheriff at any Registration Court go into the consideration whether the person who granted the bill was a person of good credit and likely to pay that bill?—No.

8813. If he could not go into that consideration, how is it to afford any criterion?—It is not very easy to assign any fixed ground on which you can assume that such a vote is fictitious; it is obvious, if a person who is a landed proprietor in one county grants his bill for a vote in another county, that you may assume that the party is solvent, and that the vote is a perfectly fair vote.

8814. Are not there many landed proprietors of considerable amount who do not always pay their bills?—I consider that that in Scotland is not rare.

8815. Why should a person's being a landed proprietor afford a favourable criterion for holding the transaction as a good one, while you say if he was not a landed proprietor the transaction might be considered as objectionable?—I put the case of a landed proprietor in competition with a party who has no apparent funds of any kind, the former having a visible source of income; but I confess I think that colourable votes can be more easily formed in fee votes than life-rent votes.

8816. *Sir William Rae.*] Will you explain that answer?—I think a colourable vote may be more easily formed in a property vote than a life-rent vote; I will suppose that the political agent of a party shall buy a house in a village of sufficient value to afford a vote; he then takes a man who has not a shilling in the world, and he grants a disposition of the property to him; that party is enfeoffed, and instantly grants a heritable bond to the disponent for the full amount of the sum advanced by the political agent for that property; in this case the voter is entitled to be registered, but he has no earthly interest in the premises, because he is obliged to pay the whole yearly income arising from the subject to the party disponent, who is perfectly safe, because he has a bond over the property, and is entitled to attach the property in preference to any other creditor.

8817. He can have no claim over the heir of the voter, supposing the man to die?—He can have no claim on the heir, provided the sum contained in the heritable bond is the sum really advanced, and the heir discharges the debt; when the price is made a real burthen in the enfeoffment, which is very common in Scotland, the property cannot be conveyed to any other party, except under the burthen of the sum contained in the enfeoffment; now, put the case that the political agent, having a perfect understanding with a man whom he wishes to inroll as an elector, gets him to agree to put the sum of 100*l.* more than the real value of the property as a burthen on the enfeoffment; in this case the political agent has a hold over the man's heir, because he may force him to pay a sum greater than the value of the property, or he may turn him out of the possession at a moment's notice, with a heavy debt due by him.

8818. Then the man would be subject to that burthen, as well as his heir?—Yes; and in such case the elector dare not vote against the interest of that political agent.

8819. Why?—Because he might call on him to pay a sum of money larger than the real value of the property; and the only proof that would be admitted on that point, would be the deed.

8820. *Chairman.*] Then you suppose he would agree to pay more than the value of the property?—I can figure a case very well where a party would agree to do that.

8821. Do you think such a case has arisen?—I am not aware of any.

8822. Or likely to arise?—Not at all unlikely to arise.

8823. *Sir William Rae.*] In this case you presume enfeoffment to follow?—Yes.

8824. In general, do you consider enfeoffment in some degree a security against the formation of such votes?—Yes; because it makes the right patent to the public, and enters into the registry set apart for the express purpose.

8825. Does it require a deed of re-conveyance?—Yes; or the renunciation of the enfeoffment, which must enter on the record.

8826. These things, you think, would tend to impede the formation of colourable votes?—Yes, because no person is fond of having 8, or 10, or 20 men enfeoffed

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on his property, because it is obvious that he cannot borrow a single shilling on his property while these votes are on the record. If enfeoffment is not held to be necessary, a man may have covered his estate with life-rents, and yet he may borrow to the full extent of the value of the property, because the creditor is not bound to look at any thing but the record, and he finds nothing there, except that the party with whom he wishes to deal is enfeoffed on the property, and he is not aware of any latent right affecting it.

8827. A security is held effectual on a property in Scotland, not by the date of the grant of the security, but by the date of it being put on the record?—Yes; if, for example, A. grant a property to B., and B. do not take enfeoffment on it, A. may grant a disposition of the same property to C., and on C.'s taking enfeoffment, B.'s personal right falls, and C. becomes proprietor indefeasibly.

8828. Lord Stanley.] Are the Committee to understand that a person in Scotland may cover his estate with life-rents, absorbing the whole of the annual income, and that, proceeding to borrow money, the lender has no opportunity of ascertaining whether the interest of the estate is so absorbed or not?—He has no opportunity of knowing it from the record, since the Reform Act passed, which dispenses with the necessity of infeftments; of course no man would enter into a transaction of that kind without knowing whether the rents were paid, and who received the rents; and in that manner he might obtain information of the fact of life-rents having been created; but suppose a man were blindly to enter into a transaction of that kind, and to advance his money, he would be entitled to sell the property and pay himself out of it in spite of the life-renters.

8829. Chairman.] Is enfeoffment a security in any other respect against the creation of such votes, but in the case that it might prevent a fraud of the person, granting additional conveyances afterwards, or borrowing money afterwards, which would be good against the estate, and the additional expense which enfeoffment occasions, if the right is to be given back?—I think that the burthen of the additional expense of the enfeoffment, which would amount to about 5*l.*, would not be at all equivalent to the advantages resulting to the party acquiring the vote from having the right made patent to the lieges at large, as every other landed right in Scotland is.

8830. Cannot the life-renters, if they choose, take enfeoffment in all these cases?—Yes.

8831. Have they done so in the cases you have made?—No, they have not, but the deeds are recorded in the books of Council and Session.

8832. But merely recording the deeds in the books of Council and Session is only for preservation?—Yes.

8833. It does not afford any security, and it does not prevent the renunciation of the deeds without any conveyance?—No.

8834. Is there, on the whole, any other security in enfeoffment against the creation of such votes, than the additional expenses that it would occasion in the publication?—No proprietors are desirous of having other persons infeft upon their lands, and if enfeoffment were necessary to qualify an elector, this circumstance would make them more unwilling to enter into any such transaction. I can figure a case where a widow possesses a life-rent over a property, and her son is *fiar*; by the Reform Act the life-renter may vote, and the *fiar* cannot; to qualify the son, the widow will renounce her life-rent, but as it is not necessary that the renunciation should be recorded after the *fiar* is inrolled, he may hand back the deed to the widow again, and the possession remaining the same, the son may be inrolled unjustly, and contrary to the provisions of the Reform Act.

8835. Are you aware of any cases where votes are created in Scotland by form of life-rent, on which the party might be enfeoffed if he chose?—Yes, he might be enfeoffed if he chose.

8836. Then has his not being enfeoffed proceeded from any other cause than because he did not consider enfeoffment necessary for his security, and a wish to avoid the expense?—I should imagine that he might wish to save the 5*l.* or 10*l.* expense of enfeoffment.

8837. If the persons to whom you granted those life-rents were not enfeoffed, has that not proceeded from their confidence that you would not grant a conveyance or borrow money on the property, and because they did not consider it necessary to do so?—I have had no communication or understanding with any of them upon that subject.

8838. Would the insisting on enfeoffment, in any case that you are aware of, tend to prevent the creation of votes?—I do believe that in many cases, particularly

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larly among the village voters, where the parties live together, as in the case of a widow and her son, these life-rents have been renounced, in order to enable the party to be inrolled, and that object having been attained, the deed is re-delivered, and the parties remain exactly as they were before the disposition was granted.

8839. Then it is only in cases where there are life-rents in favour of widows, that you consider the enfeoffment of any importance?—Far from that; I am merely stating that as a case by way of illustration.

8840. *Mr. Walter Campbell.*] With regard to enfeoffment, I should wish to know, in the case of a wealthy person who purchases a life-rent for the purpose of acquiring a vote in the county, whether the expense of a 5*l.* or 10*l.*, which it would cost him to be enfeoffed, whether that which the wealthy man would be liable to would be much considered?—I think it might; it is expressly provided by the Reform Act that enfeoffment is not necessary; he might wish to save that expense.

8841. I wish to ask whether it would not amount to this, that if enfeoffment was insisted on, the wealthy man, who wishes to acquire a property, solely for the purpose of possessing the political franchise, would at once be enfeoffed, whereas the poor man, who has a *bond fide* property, which he has acquired for the sake of the income it gives him, would not desire it, and whether it would not be a great hardship to enforce enfeoffment in his case, whereas the rich man would do so quite as readily as he does at present?—It makes little difference with regard to a rich person who wishes to acquire a vote, because he will pay any thing for a vote if he wishes to have it; but that individual who wishes to make votes for a political purpose will pause before he will permit a number of people to be enfeoffed on his estate, because their creditors may instantly come and attach the rents and sell the lands,

8842. The fact is, if a man has to borrow money on his property, and a wealthy man comes and acquires a life-rent and is enfeoffed, that wealthy man forestalls the real creditor on the estate, he being enfeoffed, and the creditor not being enfeoffed?—I do not exactly see that.

8843. *Chairman.*] Are you aware of any case in which properties were granted in life-rent, reserving the fee, before the Reform Act, except in the instance of the old life-rent votes?—I asked a professional man the other day, and he said he has understood such cases to happen, but not very frequently, except in the old freehold qualifications; but I observe that the Reform Act must have contemplated the existence of such life-rent qualifications, because it expressly confers the right of voting on a life-renter, and it deprives the fiar of that advantage.

8844. Are there not a great many instances of life-rents that occur where they are not created in that way?—There are life-rents by reservation and by constitution; and I should imagine by constitution just as feasibly as by reservation.

8845. If life-rents by constitution, reserving the property, were not usual at the time of the Reform Act, and life-rents by reservation were usual, I wish to know whether you suppose the law referred to what was the practice of the country at the time, or what was not known at the time, or little known?—I apprehend the Reform Act was meant to include all cases of life-rent, either by reservation or by constitution, and life-rents by constitution undoubtedly did exist at that time.

8846. Can you state any such case of life-rent existing at that time?—I know of none personally.

8847. Did you ever meet with such a case?—I have never done so myself; but it is not customary for my branch of the profession to frame deeds, and therefore I never had an opportunity of passing such a deed through my hands.

8848. Have you ever met with any man of business who said that he knew of many such deeds?—I have met with a man of business, now in London, who has stated that he is aware that such cases were not uncommon, though certainly they are much more frequent since the Reform Act passed, because the franchise is a direct premium on these life-rents.

8849. *Lord Stanley.*] Have you any objection to name the gentleman?—*Mr. William Robertson*, of the firm of *Pearson & Robertson*, w. s., a very able man of business.

8850. *Chairman.*] Have they become very frequent since the Reform Act?—Yes, they are made by both parties.

8851. Then you have frequently known instances of them since the Reform Act, although you did not personally meet with instances of them before?—Very frequently, because they are the most convenient way of acquiring the franchise.

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8852. You have met with instances before, and frequently of life-rents by reservation?—I certainly have; they were very common.

8853. With regard to enfeoffment, do not small proprietors very frequently possess properties for a generation without taking enfeoffment?—I believe that parties very often do hold property without enfeoffment, but I am not aware that they do so for any lengthened period.

8854. In towns, for instance, do they not possess it for generations?—I do not think for generations; very often in the villages in the country the parties complain of the expense of enfeoffment, and do not enfeoff themselves, but their sons are generally served heirs to their predecessors so as to take up the inheritance, and I should apprehend that enfeoffment is not dispensed with for a very long period.

8855. Do not purchasers, where they have no apprehension on the part of the seller, delay taking enfeoffment?—I never heard of such a case in a considerable estate; the object of the purchaser is to secure himself in every instance by enfeoffment as soon as possible.

8856. In small properties?—In small properties it may be so; I am not professionally engaged in the transmission of property from one party to another.

8857. But going over a series of titles, even of large proprietors, is it not common to meet with many instances where enfeoffment has not been taken?—Certainly it does so happen at times, but it is always reckoned a defect in the title, and the party so acquiring the property generally finds it advantageous to make up his title in a complete form by enfeoffment.

8858. Lord Stanley.] As a landed proprietor, do you conceive that this system of covering estates with life-rents is beneficial or injurious to the property?—It cannot be advantageous to the property.

8859. It has been generally resorted to in cases where there has been considerable political excitement?—Exactly so.

8860. What has been the effect of that, with regard to the relative strength of parties, so far as you have observed?—I think the advantage, so far as I have learned, has rather been in favour of the conservative party; in consequence of the villagers obtaining votes in the counties, on properties burthened with debt, it became an object with landed proprietors on both sides to create votes, in order to give a due influence to land.

8861. Do you think there is any probability, that after the excitement should have subsided a little, the parties will weigh more calmly the advantages and disadvantages of covering their property with these sort of claims?—I should think it extremely likely; as long as an active contest is going on in a county, people do not often consider the inconvenience.

8862. I believe, according to the law of Scotland, a person may grant life-rents to the full amount of the property, without reference to the incumbrances on it?—Yes.

8863. Do you think any alteration in the law in that respect would be beneficial or desirable?—I think it would cut off three-fourths of the number of these votes. In the case of Temple Hall, my own vote, to which I have already spoken, I paid 100*l.*; the price I ought to have paid was about 250*l.*, had I possessed a clear interest of 10*l.* in the lands; but there is a debt of 2,500*l.* on the property, which consumes the whole rents, except, I believe, a small sum. Any thing that comes to my credit has been laid out in some additional buildings; but it is a very trifling sum.

8864. In case of those life-rents on estates encumbered to their full value, the qualification is more or less in all cases a colourable one?—Undoubtedly; because the party obtaining the vote has not a real interest of 10*l.* in the premises.

8865. Are you aware in that respect that the law of Scotland and the law of England are different?—I am aware they are.

8866. You conceive, setting aside all party considerations, that it would be a desirable thing to interpose that check on the multiplication of life-rents on encumbered estates?—If the heritable burthens or mortgages were deducted from the value of the property in estimating its value, I think it would be a very great improvement, as that would strike at the root of a vast number of objectionable cases.

8867. You have also stated, that colourable votes are more easily obtained in property in fee, than in property in life-rent?—I think so.

8868. Could you suggest any similar check, with regard to the purchase of property in fee, where the whole nominal purchase-money was left as a burthen on the enfeoffment?—I should be inclined to hold that to be equivalent to a mortgage over

over the property, and I would deduct that sum, and only allow the party to vote provided he had 10*l.* clear interest in the property, after deducting those heritable debts and real burthens.

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886*g.* Even if these deductions made considerable difference in the number of the constituency in some of the counties, do you apprehend they would have the effect of striking off those persons who *bond fide* had a real interest in the property of the county?—I do not think it would; I think it would purify the constituency.

887*o.* Would you consider it desirable to prevent the purchase of life-rents for the purpose of obtaining political franchises, where the party *bond fide* paid down the purchase-money for life-rents?—Certainly not; I consider it to be the purest kind of vote; a party advances his money, and he obtains a 10*l.* interest.

887*1.* Do you think any valid restriction would be imposed on that class of votes, if it were required to give proof that the purchase-money were paid in cash?—I do not think that that could be ascertained; supposing it is required that money should be paid over by A. to B., B. has only the next day, or a month afterwards, to go and borrow a sum of money from A.; that is a separate transaction, and that could never be inquired into. I think, as the currency of Scotland is a paper currency, that you would strike at the root of many *bond fide* transactions, if you require a payment in money.

887*2.* You have adverted to the case of joint tenancy in agricultural farms; have you turned your attention at all to the votes that have arisen, or to the votes more or less colourable which have been obtained on joint proprietorships in towns, on house property in towns?—I think if you were to deduct the heritable debts and burthens on the property, and cause the parties to be duly enfeoffed on the property, that the vote would be a perfectly good vote.

887*3.* Mr. *Walter Campbell.*] By introducing enfeoffment you debar the poor man from acquiring a vote?—It is of much greater consequence that his right should be duly established, though it should cost a few pounds more, because his right is only a personal right before enfeoffment, and is in many respects incomplete.

887*4.* Is it not absolutely the fact, on your supposition, that nine-tenths of the poor people, who now hold *bond fide* properties, would not claim their franchise if they were forced to enfeoff?—I do not think so, because they are very fond of acquiring the franchise, and they would give a great deal to acquire the franchise; and, at all events, in a contested county, such a burthen would fall upon the candidates or their mutual friends.

887*5.* Is it not the fact that with all the fondness people have of acquiring the franchise, the half-crowns they have to pay to the schoolmaster do not prevent many of them from putting in their claim?—I never heard of such a case, because I believe that in point of fact the political agent pays all the half-crowns.

887*6.* *Chairman.*] And then they are not paid by the party claiming?—I understand the party claiming does not pay them.

887*7.* Were there not, in point of fact, before the Reform Bill, a great many proprietors, in the different villages in Scotland, of properties about 10*l.* a year who were not enfeoffed?—I believe there were a considerable number of them whose titles were not complete by enfeoffment; but I do believe, from the circumstance that the heir generally takes out service to his predecessor, that in the course of a very few years the parties are enfeoffed; besides a great many of them are in debt, and they cannot raise a shilling on the property until they are enfeoffed.

887*8.* Mr. *Walter Campbell.*] In the part of the country you are best acquainted with, I ask whether the largest number of the small proprietors did not hold their property without enfeoffment previous to the Reform Act?—On that point I cannot speak with precision; but I rather suspect that the proportion was not so great as that stated by the Honourable Member.

887*9.* Lord *Stanley.*] You have been asked whether certain points being required would not increase the expense, and thereby impede the poorer classes from acquiring their franchise; can you suggest any mode in which the expense might be saved in proceedings in the courts to establish the franchise, where it was *bond fide*?—In the matter of expense, I believe, as far as my experience goes, that the claimants and the voters do not pay a shilling of it, because it falls on the candidates; I know that in the county of Peebles, where we have had an active contest in the Registration Court for the last two years, the conservative agent has paid the whole expenses of that registration, and the voters have not been called on to pay any thing.

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8880. I wish to know whether you can suggest any mode by which the expenses of registration can be diminished, which, of course, *pro tanto*, would amount to an encouragement of the franchise?—I have often considered that subject, but it is so large a subject that I should be sorry to give an opinion on it; there is a great diversity of opinion on the subject, but I do not think, as long as it is necessary to summon witnesses to speak to the facts of disputed value, and to have counsel and agents to investigate and discuss questions of title, that you can diminish the expense in a very great degree.

8881. Mr. *Walter Campbell*.] I want to know whether it would not, in your opinion, very much decrease expense if the sheriff had the power of enforcing the expenses if any frivolous and vexatious objection was raised against a candidate?—I think so.

8882. Lord *Stanley*.] I believe the present practice in a contested county is to object to every vote?—No, not every vote.

8883. *Chairman*.] You said the conservative candidates and their friends had paid the expenses of the claimants?—I believe so in Peebles-shire; but Mr. Robertson can speak more fully on that point.

8884. Supposing that to be the case, does it not tend to make those electors more dependent than they would otherwise be on the person who paid their expenses?—I should think not; there is a great competition to get the electors to lodge claims, and I believe in many instances they give mandates to both parties, or at least both parties have lodged claims for the claimants.

8885. Will not a person whose expenses are paid by another feel in some degree called on to support him afterwards when a contest shall arise?—I think that the proverbial caution of my countrymen will induce them not to pledge their votes till it is absolutely necessary, and that the payment of the half-crown will not have any effect on their subsequent vote.

8886. Are not the inquiries you have referred to in order to ascertain the circumstances of the different votes, attended with very great expense to the candidates?—Very great indeed.

8887. Therefore, in order to ascertain whether such votes are real votes or otherwise, there must be a very expensive inquiry gone into?—I think that the most expensive inquiries are those which relate to those votes which turn upon questions of value; on those questions of life-rent the expenses are not generally great, because one case is generally agreed on by the parties on each side, and a considerable number that are tried stand or fall by that case.

8888. Do you see no objection to creating any indefinite number of life-rents, provided that bills are granted for those life-rents in the manner you have described by persons not resident in the county?—I do not see any objection to it, because there is a distinct bonus or premium held out for it in the Reform Act, by which those parties acquire the franchise from a life-rent vote.

8889. Is that system of creating life-rent votes going on generally throughout Scotland?—I believe so, in the South, not in the North or West of Scotland.

8890. Mr. *Walter Campbell*.] You state that the expense in the Registration Courts is not very great in life-rents?—I think not.

8891. Is not the expense very great in bringing forward witnesses to prove the value of house property in villages?—Certainly, because you generally have a mass of conflicting evidence; each party brings forward its valuers, and the sheriff has the difficult task of deciding between the conflicting testimonies of these men.

8892. Is it not very much the practice, where a contest is keenly going on, for the parties to object to every person who holds such property on both sides?—I do not think so; at least in the counties where I have been concerned; in Peebles-shire we have had no poll, and therefore neither party is very anxious to do any thing that may appear ungracious to the voters, and except in the case of avowed partisans, they are permitted to get on the roll very easily.

8893. I think you stated these expenses were paid always by the candidates?—By the agents.

8894. Acting for the candidate?—Yes.

8895. Now, if the expenses are paid by the candidate or his committee, you have given a further answer, in which you state that the parties did not summon those persons, not wishing to give them offence; it would not be likely to give them offence, if the expenses did not come out of their own pockets?—It is an object always to avoid expense; and if the summoning of a particular witness is by the advice

advice of the political agent, he will be very chary of bringing witnesses merely for the sake of causing unnecessary annoyance to the claimant, or for the purpose of stating some frivolous objection.

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8896. Are there not in Scotland a great number of situations in which the general feelings of persons living in those villages are pretty well known by being on one particular person's property?—In the county where I have been principally engaged in registration matters, the villagers are quite independent, because they are on no person's property except their own.

8897. Are there not throughout Scotland, in all parts of it, villages which are entirely one person's property?—I believe that in the Highland districts there are; but then the parties cannot claim, except they are feuars, or long leaseholders, and consequently they may be held to be independent of the superior of the soil.

8898. Is there not in a great part of Scotland a considerable attachment between the landlord and those who live on his estate?—Great attachment; I have known very few instances in which tenants have not voted with their landlords on both sides of politics, because the feeling between landlord and tenant in Scotland is on a very happy footing.

8899. Has it come within your knowledge that feuars, or holders of long leases in villages, have been summoned on the score of value, and objected to on frivolous grounds?—I have never known such an instance, because wherever the house is a very good house, the value is not objected to.

8900. *Chairman.*] In a small county, might not an election be decided if life-renters were to be created in large quantities, entirely by persons who were not residing in the county, and who had no further connexion with it than the 10*l.* which they might each receive?—Undoubtedly, if they are made in sufficient number, and if the contest be a close one.

8901. Then, their whole interest would be the difference which they each received between the interest of their bill and the 10*l.* that was paid out of the land?—Yes, but when they choose to pay up the money, then they would have a pure 10*l.* interest from the land.

8902. That money might, as you have stated before, be paid back to them, and you consider a bill equally as good as money?—Yes, provided the party be reputed solvent.

8903. *Mr. Walter Campbell.*] On turning to the question of remedy, do you conceive residence would have the effect of cutting up these colourable votes?—I think it would be a very unfair proceeding, because in the case of Ireland it would be tantamount to saying few Irish proprietors should vote, because few can live there.

8904. Supposing residence to be unnecessary, and supposing the qualification was enlarged to the extent of 50*l.*, and the same with leaseholders, would not that have the effect of cutting off the accumulation of life-rents in small properties?—It would render it more difficult to make life-rent votes, inasmuch as it is more difficult to obtain men to give a large sum for a 50*l.* property than for a 10*l.* property; but I conceive that such a proposition would be a complete repealing of the enfranchising clause of the Reform Act.

8905. You do not conceive a vote is at all colourable if a gentleman in the south of Ireland acquires a vote in a county that he never saw?—I do not see the least difference, because the countries are united, and he is as much interested in the prosperity of one part of the empire as the other.

8906. *Chairman.*] Then you see no objection to votes being granted in a small county to 500 persons who have 10*l.* interest for their life, and grant a bill, which they may pay or not pay, or receive back again?—I think that is an exaggerated case which is not likely to happen; I think it would be much to be regretted that any system should be resorted to to that extent.

8907. Is there any thing to prevent that happening, if such means were used in the county of Peebles?—If there is a sufficient quantity of unentailed property, no doubt you may make as many votes as you can cover the property with, if you can get people to take them; but it is most difficult to get people to purchase these life-rent votes; and I believe, in point of fact, that the system may be looked on as drawing very near to a conclusion, because that class of men which proprietors can trust is now very nearly exhausted.

8908. Would it not be a great restraint on that, if residence in the county were required?—It would; because no man would go and live on his one-tenth *pro indiviso* part of a sheep farm, for the purpose of voting once in seven years.

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8909. Would it not also be a great restraint if residence were required in every case where the interest did not amount to 50*l.* or 100*l.* a year?—Certainly it would.

8910. Lord *Stanley*.] Would not these restraints be entirely at variance both with the spirit and the letter of the Reform Bill?—Most unquestionably.

8911. Mr. *Walter Campbell*.] Why, as there is a clause in the Reform Bill which gives the right of voting to tenants paying 50*l.* a year rent, why is the enforcing the clause of residence of life-renters contrary to the spirit?—Because it is contrary to the words of the Act, and I must judge of the spirit of the Act by its words.

8912. Then, judging by the spirit, are not the old qualifications of life-renters done away with?—The old qualifications of life-renters are not done away with, except to the extent of those old fictitious qualifications, where the voter derived no pecuniary interest whatever from the land on which he was inrolled.

8913. *Chairman*.] Is there any thing to prevent 400 or 500 persons in Scotland, as the law stands, acquiring life-rents in each of the counties, and making a return in these counties, with no further interest than 10*l.* a year for which they have granted bills which they have never paid?—Such cases are not beyond the bounds of possibility; but, in point of practice, it is perfectly out of the question, because I believe both parties are thoroughly exhausted in the power of obtaining men whose solvency they can trust; and, I believe, the system of making life-rent votes will very soon come to a conclusion for that reason.

8914. You have stated that you do not conceive they are limited to persons either in Scotland or in England, or in Ireland?—Certainly.

8915. If therefore 500 can be found in the three kingdoms, they might do so?—Certainly; but these parties must probably attend to their own local interests, and must vote on their own properties in their own counties and burghs; therefore that is a case which I imagine is purely hypothetical, and cannot operate in practice to any effect whatever.

8916. I think you have stated you have votes in four counties?—Yes.

8917. Are there not persons who have a much greater number of votes of that description?—I do not think people can have many more votes than four, because I apprehend, as the polling takes place in two days, that it is absolutely impossible that a person can vote in more than four counties; I never heard of a person having more than five votes.

8918. You have stated that colourable votes are more easily made in fee than in life-rents?—Yes.

8919. The person creating the life-rent votes knows the individual to whom he creates it?—Certainly.

8920. And no other individual can hold the vote?—No.

8921. He has, therefore, the entire selection of the individual who is to vote?—Certainly.

8922. If he grants a fee, may not that fee be adjudged by his creditors, and will it not, although not adjudged by his creditors, pass to his heirs, of whom the granter can know nothing?—Of course; but a life-rent may be adjudged in the same degree as the fee.

8923. Will the life-rent, if adjudged, create a vote?—Certainly not to the adjudger.

8924. Then, in the one case, the party has the certainty that no other person can exercise the vote, whereas if he grants a fee the vote may pass to a person of whom he may know nothing?—If the proprietor of the fee becomes bankrupt, and the property is sold, it falls into other hands, and the party acquiring it will, of course, be entitled to vote.

8925. He may also convey it to any person, and his heirs may succeed to it?—Yes.

8926. On the other hand, a person who creates some 20 or 30 life-renters has the certainty that no individual can vote but those 20 or 30 persons?—Yes.

8927. Is there not a very marked distinction between the two cases where a person is creating colourable votes?—If the transaction is not a *bond fide* transaction, of course there is room for colourable votes, inasmuch as the party disposing knows the people with whom he deals; but I apprehend if there is a real *bond fide* transaction, there is nothing more objectionable in the mode of creating these votes than in the mode of creating a property vote.

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8929. In any unfair or colourable transaction, does not the party acquiring it wish to have persons whom he knows, rather than persons of whom he can know nothing?—I should imagine so.

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8930. In the one case where he selects life-renters, he employs persons all of whom he knows for this colourable transaction; whereas, if he grants it in fee, he cannot know who may be the person who may ultimately acquire the fee?—Yes; but he may provide himself against a contingency of that kind in the way I have mentioned, that is, by creating the price a real burthen on the enfeoffment; and the property cannot be transmitted to any third party without that burthen in the enfeoffment being discharged by the disponent, which he cannot be obliged to do, except on payment of the price.

8931. In putting that case, you put the case of a larger price than the value being raised?—I put the case on a price equal to the value of the property, as well as on a larger price than the property is worth being placed as a burthen on the seisin.

8932. Supposing the price to be no more than equal to the value of the property, then in every case of payment of the value of the property, another person might acquire a vote?—Certainly.

8933. Have you ever known of any case where that was done, or do you believe them likely to occur?—I believe, in the county of Peebles, the political agent in the conservative interest did advance money to one or two persons, and took a bond for the amount, or, if he did not take a bond for the amount, he retained the title-deeds. The property cannot be transmitted without the title-deeds, and the party who possesses the title-deeds under a lien for his advances, is not bound to exhibit those title-deeds to the party who is in possession of the premises; that consequently is another way in which a political agent can have a command over a man who has not found it convenient to advance the funds for the property.

8934. Then, it is only in that case of the price not being paid on the property burthened that you consider a life-rent vote and the vote granted in fee standing on the same footing?—Although I heard that such a case exists as the one I have mentioned, yet I believe the fact to be, that in all the counties in Scotland there are votes of that kind created by both parties, although I am not able to state any particular case, but it is universally believed that such votes are made by both parties.

8935. In fee?—Yes.

8936. Is it not generally understood that colourable votes are made more in life-rent than in fee?—I should think not; I should think the reverse.

8937. Under the old system, when votes were created, were not colourable and fictitious votes more usually created in life-rent than in fee?—I believe in those days almost all the votes were colourable, inasmuch as the party derived no profit from the land on which he was enfeoffed; and it was more common for properties to be granted in life-rent than in fee under the old system.

8938. But under the old system did not persons frequently pay 500*l.*, or 1,000*l.*, or 1,200*l.* for the fee of a vote?—They very often did so.

8939. In the creation of colourable or fictitious votes, was it not always the usual calculation that, in granting life-rents, the political interest of the party granting them was not injured, because he knew who were the life-renters, and if he granted fees, they might pass to other persons who might afterwards oppose his political interest?—That probably was the reason why votes were more frequently made in life-rent than in fee.

8940. Do you not conceive if colourable votes are made in Scotland in future, they are more likely to be made by means of life-rents than by grants of fee on that account?—I do not think so, because the qualification in Scotland is so low that it is not difficult to obtain for a very small sum a vote in life-rent or in fee; if you have a vote in life-rent you generally pay a large sum, because you pay according to your age by the annuity tables; if you have a vote in fee, upon a burdened property, you may not have to pay above 40*l.* or 50*l.* for a vote.

8941. You have said it was difficult to obtain a sufficient number of persons to hold votes whom you could trust?—Whose finances you could trust; these parties are either solvent or they are not solvent; if they are not solvent their bill is worth nothing, and therefore that circumstance must check the formation of votes.

8942. Are there not many hundred persons in Scotland, England and Ireland whose credit is good to the extent of 200*l.* or 300*l.*?—I should think so.

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8943. Lord

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8943. Lord *Stanley*.] You said just now that one of the most expensive parts of the registration was proving the value of house properties in towns; is there no assessment for local purposes in the towns which might form the basis of the value?—Not in villages or towns which vote in counties.

8944. In towns where there is such a local assessment, that is *prima facie* evidence of the value of the property?—Certainly so. In the city of Edinburgh the police-books are produced in the Registration Court, and every house that is not rated at 10*l.* is excluded from the register.

8945. What is the origin of the great expense in proving the value of a house; is the rent of the house taken as no test?—It is often taken as a test; but the party voting generally occupies.

8946. Occupies his own freehold?—Yes; and you must have an elaborate calculation of the value of the front room, and the back-room, and the value of the pig-stye and the cow-house, and the small piece of ground forming the garden; in short, it is very difficult to strike a fair value, such as a tenant would give.

8947. Is there any peculiarity in the wording of the Scotch Reform Act, which leaves the question more open than the corresponding provision in the English or Irish Acts?—The words of the Scotch Act are, “shall actually yield,” and “capable of yielding;” so that it renders it a difficult thing to know what the property is capable of yielding.

8948. Has that term “capable of yielding” been ever explained or interpreted in any other way than it was worth in the market to rent so much?—I think, generally, the value has been estimated as affording so much to the party himself, what it was really worth to him.

8949. Do you mean, that evidence is always to be given under the term of being worth so much to him of the value; for example, of any business carried on upon the premises?—I think that they exclude any business. Suppose that a loom is contained in one of the rooms, they generally strike that out of consideration, but the loomsland is added to the value.

8950. Has not the expression, “being worth to him,” been estimated by that which he could obtain for it, if he could let it?—Very often it has; but I do not think uniformly.

8951. Then, is there considerable doubt under the present terms of the Reform Act as to what is the amount necessary to give the franchise?—There is no doubt; nominally it is 10 *l.*; but the mode of proof varies in every different part of the country, and the committees on each side appoint valuers, who take different modes of estimating the property, and the results are frequently extremely discordant.

8952. Are there no local assessments in all the towns in Scotland for any purpose whatever which will afford a test?—No, none; in the county of Peebles the parties agreed that the sheriff should nominate a valuator, and during this last registration we found that attended with the most beneficial results, as it simplified the process amazingly; he appointed impartial men to decide on the value of the disputed property, and the parties agreed to abide by their decision.

8953. What, in point of fact, was the point which the valuers had to ascertain?—They took into consideration the value of the garden and house, how much they would produce if let; but that is not the invariable practice in Scotland, but these valuers, I believe, did so.

8954. You found the appointment of valuers in the towns by the sheriff under these circumstances as much facilitating the registration and preventing a great deal of the litigation that formerly prevailed?—A very great deal; and I should submit that it would be a very good arrangement that in any future legislative measure, the sheriff should be called on to appoint valuers in order to save parties bringing into court the mass of conflicting evidence they are obliged to submit in such cases.

8955. How is the sheriff appointed in Scotland?—He is a barrister of three years' standing and upwards.

8956. Mr. *Walter Campbell*.] In a county like Lanarkshire, how would you arrange valuers there?—More of them might be appointed.

8957. How would you pay them?—I believe it came out of the joint funds of the candidates in Peebles-shire; I cannot offer a suggestion for the payment of these parties.

8958. Lord *Stanley*.] Whatever might be the payment to the valuator, would not the money expended in his daily wages be infinitely less than the money under any other circumstances expended in litigation between the parties?—Undoubtedly.

8959. It

8959. It is with that view and with the object of the greater certainty of the less expense that you would recommend that practice?—Yes.

W. Forbes, Esq.

8960. *Chairman.*] You stated that you considered the number of life-rent votes that might be created to be limited by the number of persons who could be found sufficiently trustworthy to be answerable for the price?—Sufficiently solvent, or who were willing to take these votes; parties are very often unwilling to be at the trouble of taking votes, although they are solvent.

4 May 1837.

8961. Do you consider that the only limit to the number that may be made in Scotland in the different counties?—No, I think there is another limitation, that is, the quantity of entailed property in Scotland, which is always increasing, and of course, as no entailed proprietor can grant an indefeasible title to a feuar or life-renter, the power of making life-rents must *pro tanto* every year be diminishing.

8962. Then you consider there is no other limit than that you have mentioned to the creation of such life-rents over unentailed property in Scotland?—I think not, except the great inconvenience which the proprietor is put to in granting these life-rents, which of course must likewise limit the formation of such votes.

8963. Will he not be put to greater inconvenience granting them in fee?—As great, but not greater.

8964. Do you not suppose, where counties are keenly contested, persons making such votes will be less anxious about the solvency of those who may receive them?—I know that in the county of Peebles, the first question asked is as to the solvency of the parties with whom we transact, at least in so far as my experience goes.

Martis, 9^e die Maii, 1837.

MEMBERS PRESENT.

Lord Stanley.
Mr. Fox Maule.
Mr. Fergusson.
Sir Hugh Campbell.

Mr. Edward Buller.
Lord Viscount Stormont.
Mr. Walter Campbell.

THE LORD ADVOCATE IN THE CHAIR.

James Robertson, Esq., called in; and Examined.

8965. *Chairman.*] YOU are a writer to the signet in Edinburgh?—Yes.

*James Robertson,
Esq.*

8966. You have been so for how long?—For 17 years.

8967. Are you well acquainted with the county of Tweeddale?—Yes.

9 May 1837.

8968. Was you employed by Sir John Hay as his political agent in that county?

--Yes, I was, on the 3d day of July 1835.

8969. Did you then examine the state of the roll in the county of Tweeddale?

--Yes.

8970. What was the total number then?—I found the total number on the roll, in 1832, to be 300.

8971. How many tenants?—Tenants of 50*l.* qualification 157.

8972. Proprietors?—Landed proprietors 25; I separate them from house proprietors.

8973. On what principle do you separate landed from house proprietors?—I have separated them because I thought I might be asked to do so.

8974. What is your distinction?—The distinction is, if the party is inrolled on land, purely land, or on an estate consisting principally of land, I have set him down as a proprietor of land; where he is inrolled on a house with a little bit of garden, I have put him down as a house proprietor.

8975. House proprietors, how many?—Sixty-three.

8976. How many life-renters?—Life-renters and proprietors in virtue of offices, seven.

8977. Were they all clergymen?—All established clergymen.

8978. Old freeholders?—Forty-eight.

8979. How many of these were non-resident?—Nineteen resident, 29 non-resident.

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8980. Those

James Robertson,
Esq.

9 May 1837.

8980. Those were freeholders?—Freeholders on the old roll.

8981. Of the landed proprietors, who were resident and who were non-resident?—Eighteen resident and seven non-resident.

8982. Were the proprietors of houses and gardens all resident?—Fifty-three resident and 10 non-resident.

8983. Are you aware that, previous to that time, although there was no contest in the county, electors had been urged to lodge claims, in order to make the constituency appear numerous?—Yes.

8984. Can you explain the reason of that?—It was proposed, I understand, at the passing of the Reform Bill, to join the two counties of Peebles and Selkirk, on the ground that the constituency in these counties were small; and in order, I believe, to prevent this taking place, it was considered an object to show the constituency of these counties in their full numerical strength.

8985. In 1833, what addition was made to the roll?—Forty.

8986. How many of these were tenants?—Fourteen tenants of 50*l.* qualifications.

8987. How many proprietors?—Landed proprietors six, and house proprietors 14.

8988. Any joint proprietors?—None.

8989. How many life-renters?—Two life-renters in virtue of offices, and three other life-renters.

8990. How many of them were from succession?—Two of them had their rights in their persons previous to the passing of the Reform Bill, and the third was inrolled under a gratuitous conveyance, granted after the passing of the Act.

8991. Who was that?—Mr. Kenneth Mackenzie, the son of Mr. Mackenzie of Dolphinton.

8992. He was a life-renter by constitution?—I never saw his deed, because he was inrolled long before I had any charge of the county; I see by the register he is described as a life-renter, and I understand his inrolment was in virtue of a gratuitous conveyance from his father.

8993. Had you ever met, before the passing of the Reform Bill, with any life-rent constituted by persons retaining the fee, and conveying a life-rent?—No, I have not, except the old freehold qualifications which were created by constitution.

8994. Did you ever hear of any in ordinary practice?—I have heard of them, but have never met with any in my own experience.

8995. In what sort of cases have you heard of them?—There was a friend of mine lately in London, who I am told frequently met with them in practice.

8996. Who was that?—Mr. William Robertson.

8997. Have you ever heard of them from any other person but Mr. Robertson?—No, I have not.

8998. Was Mr. Kenneth Mackenzie the first life-renter ever inrolled from constitution?—He appears to be so from the register.

8999. Are his father and he understood to be in the conservative interest?—Yes.

9000. How many were non-resident?—Of what class?

9001. Of these persons inrolled in 1833?—Of the whole inrolment of 1833, there were 35 resident and five non-resident.

9002. Viscount *Stormont*.] You stated that two were inrolled in virtue of rights existing in their persons previous to the passing of the Reform Bill; will you state the nature of those rights?—One of them was James Dobson, who was inrolled as the husband of the proprietrix, but it turned out on investigation, that he was inrolled as the husband of a life-rentrix only; I accordingly lodged an objection, and he was expunged from the roll.

9003. What was the other case?—The other is Robert Brown, weaver, in Peebles; I do not know the nature of his right, but I presume, on inquiry, it had been ascertained to be good, because I have never lodged any objection to his inrolment.

9004. How is he described in the register?—"Life-renter, houses and lands, Peebles."

9005. You know nothing about it?—No, I do not.

9006. Mr. *Walter Campbell*.] What is the date of the inrolment of Kenneth Mackenzie; what month?—The 14th of August 1833.

9007. Have you any means of knowing when the claim was lodged for him?—It must have been lodged on the 20th of July 1833.

9008. You

9008. You do not know when?—It must have been on or before the 20th of July 1833. James Robertson
Esq.

9009. *Chairman.*] What addition was made to the roll in 1834?—Thirteen.

9010. How many of these were tenants?—Five.

9011. How many life-renters?—Two.

9012. Who are the two life-renters?—The first was Mr. Carmichael, the Whig candidate for the county, and the second Mr. David Milne, advocate.

9013. Do you know what was the nature of Mr. Carmichael's life-rent?—No, I do not; I never saw his conveyance, and I do not know further than what appears by the register; he is there inrolled as life-rent proprietor of lands and "Mill Skirling" in the parish of Skirling.

9014. Are you aware that these lands are worth 200*l.* a year?—No, I am not.

9015. Do you believe them to be less?—I have no means of knowing; I never made any inquiry.

9016. Have you any reason to doubt that Mr. Carmichael actually receives the rents of this land?—I have neither reason to doubt that he receives nor does not receive. I know nothing of the matter.

9017. If you thought there was any doubt, could you not have inquired?—Yes, certainly; although I do not think I should have lodged an objection to Mr. Carmichael's; I never made any inquiry.

9018. Are you aware that he is the eldest son of Sir Thomas Carmichael?—Yes.

9019. And that his father is a considerable proprietor in the county?—Yes.

9020. Is it unusual in entailed proprietors in Scotland to give their eldest sons a provision by proportion of the estate, which is called propelling the inheritance?—I should think it is.

9021. Who is the other?—Mr. David Milne, advocate.

9022. Was he resident or non-resident in the county?—Non-resident.

9023. Do you know how he acquired his vote?—His title consisted of a disposition, dated the 28th of January 1834, granted by Lord Medwin, with consent of his eldest son, Mr. Forbes, advocate.

9024. Do you know what was the amount of his interest in the property?—The rental was ten guineas.

9025. Was it a separate rent-charge, or did he grant a back tack?—The lands were let previously to the conveyance, in favour of Mr. Milne, to a tenant on a lease, for ten guineas a year.

9026. Do you know whether he drew the rent?—The first year's rent was allowed the tenant for dykes, in terms of his original agreement; and the second year's rent was drawn by Mr. Milne, through his agent.

9027. About what time, do you know?—It was the rent due at Whitsunday 1836, that he drew.

9028. Was his vote objected to?—Yes, it was.

9029. Did he appear to have drawn the rent before his vote was objected to?—It was drawn about that time; I do not see the exact date on my notes.

9030. Were any of the tenants joint tenants that were inrolled that year?—None in 1834, as far as I can see from the register; I had no charge of the registrations until 1835.

9031. Before the registration in 1855, can you state what were the numbers of tenants, proprietors, life-renters by office and constitution, and old freeholders, according to the roll?—At 1834 there were 48 old freeholders, 32 owners of land, 80 owners of houses and gardens, 1 husband of a proprietrix, 5 life-renters, 9 life-renters in virtue of office, 2 tenants of long leases of 57 years and upwards, 176 tenants of the 50*l.* qualification; making, in the whole, 353.

9032. How many were non-resident?—Resident 289, and non-resident 64.

9033. Does that roll include persons who are dead or denuded of their qualifications in 1835?—Yes, down to 1835, it does.

9034. Can you state how many were then dead or denuded?—Previously to the registration of 1835, there were seven deaths.

9035. And any denuded?—Sixteen denuded; they were not expunged; there were only 11 expungements in all in 1835.

9036. What then was the amount of persons on the roll, after deducting those who were dead, or ought to have been expunged as being denuded?—There were exactly seven deaths; I cannot make any further deduction till we come into the Registration Court of 1835; it was the operation of that Registration Court that made the other alterations.

James Robertson,
Esq.

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9037. Before the registration in 1835, are you aware that Sir John Hay applied to his friends to make additional votes?—No, he did not.

9038. Before the registration of 1836?—Yes he did.

9039. What additions were made to the roll in 1835?—One hundred and thirteen.

9040. How many of those were tenants?—Thirty-seven tenants. and 17 joint tenants.

9041. How many proprietors?—Landed proprietors nine, joint proprietors of land four, house proprietors 19, husband of proprietrix of land one.

9042. How many life-renters?—Life-rent proprietors in virtue of offices 10, life-renters by constitution seven.

9043. How were the rights of the seven life-renters constituted?—They were the seven sons of Mr. Atcheson, of Drumore, who acquired the conveyance from their father.

9044. Was it done by gratuitous disposition?—The disposition bore to be gratuitous.

9045. Did the disposition contain either a procuratory of resignation or a precept of seisin, so that they could be enfeoffed?—It contained a precept of seisin, so far as I remember.

9046. What was the value of the property?—It was proved in the court to be upwards of 80*l.* a year of rent, but I had not the charge of the cases in the Registration Court. They were then under the charge of the private agent of Mr. Atcheson's family.

9047. Was you present in the Registration Court?—Yes, I was.

9048. Do you recollect whether Mr. Atcheson, the grantor, stated that he could recall that at pleasure?—Mr. Atcheson made a declaration before the sheriff, but not in court, and I am certain he did not state he could recall it.

9049. Was Mr. Atcheson to be tenant of his sons in that property?—Yes, the property was formerly in the natural possession of Mr. Atcheson.

9050. And he was to become tenant of that property which had been his before?—There was no lease executed; it had been arranged, I presume, by Mr. Atcheson's own agent that he was to continue tenant of the lands; I had nothing to do with the execution of the deed in any shape, or with any of the arrangements entered into between the parties.

9051. Viscount *Stormont*.] Does it come within your knowledge that there was a back tack?—It was sworn in the evidence, before the Registration Court, that there was no back tack.

9052. *Chairman*.] But there was an intention to make a memorandum of lease?—It was understood that Mr. Atcheson was to continue as his sons' tenant; but I observe Mr. Atcheson in his deposition swears that he considers his sons entitled to put him out of possession, and to do every thing they like with the property.

9053. How were those seven claims disposed of by the sheriff?—They were rejected by the sheriff in the Registration Court.

9054. What became of them afterwards?—They were appealed, and the sheriff's judgment reversed; and they were all admitted to the roll.

9055. On what ground were they rejected?—The sheriff held, first, that the delivery of the deed claimed on was not clearly proved; and, second, that possession of the land was not properly established.

9056. Lord *Stanley*.] Then the sheriff's decision was reversed afterwards, on the point of fact, but not on the point of law?—The proof was made more clear before the Appeal Court.

9057. There was no dispute as to the law, it was only as to the fact?—No, only as to the fact.

9058. *Chairman*.] Did the sheriff state that he considered them fictitious when he rejected them?—No, certainly not; and in the Appeal Court the judges held the claims sufficiently proved, that the deed was *ex facie* regular and unexceptionable, that delivery was made out, and that possession was established.

9059. Were claims made for other persons on Mr. Atcheson's property?—Yes, there were.

9060. Who were they?—Claims were lodged in 1835 for the two Messrs. Allen, William Mill, Thomas Shand and Alexander Paterson, but I did not lodge any of these claims.

9061. Were

9061. Were any of them resident in the county?—The two Messrs. Allen are brothers of Mr. Allen of Glen, a considerable proprietor in the county.

9062. Do they reside in the county?—No, they do not; and the other three gentlemen are strangers to me.

9063. Do you know the grounds on which they were withdrawn?—No, I do not.

9064. Viscount Stormont.] Their claims were withdrawn altogether?—Yes.

9065. Chairman.] Was Mr. Atcheson examined on that subject?—He alludes to it in his deposition before the sheriff.

9066. Have you a copy of the deposition?—Yes.

9067. Did he state in that deposition that he did not know whether the conveyance he had made to these gentlemen had been intimated to them or not?—I will furnish the Committee with a copy of the deposition.

[The Witness then handed in the following document.]

DEPOSITION of William Atcheson.

William Atcheson, sen., being examined in reference to the claim of David Atcheson, depones that the disposition shown to him was signed of the date it bears. Being asked whether he received any consideration for this disposition, depones that every guinea which his sons get from him, or the value of any property transferred to them, is put into witness's ledger against them; that the value of these life-rent rights, so far as witness knows, was not inserted in the ledger at the time; cannot say whether it is yet inserted; the books were generally balanced about the 7th of July; payments of money are entered in the cash-book at the time; when property or goods are transferred the value is entered in the day-book; has no doubt that he consulted his sons before granting this disposition; all his sons were in the country at the time; the property is in the witness's own occupation; there are a good many cottages upon it, for which the cottagers pay rents, except two or three occupied by ploughmen, to whom the houses are part of their wages; one of these cottages cost the witness 100*l.* to fit up for a blacksmith, who is now gone, and the cottage is occupied by cotters; rent is regularly paid by the cotters twice a year, the last was paid at Whitsunday to the witness through his overseer, who must have granted the receipt; he received the Martinmas rent in the same way; cannot tell exactly what rent is paid by him to his sons, but while the value of the life-rent is charged against them he takes it from them at a certain rent; every field is valued in his books, and that value is charged as the rent due them; he valued the fields this year himself, as he has always done; he keeps an account which he calls a feeding account; the books are open to the inspection of his sons in the counting-house, and they have not objected to any of the entries; occupies this property as his sons' tenant, but cannot tell whether there be a written lease; the rent has not been fixed in any other way than that already explained; taxes the value of his property every year about Whitsunday, and did so this year; cannot tell whether his sons are infest or not, nor who paid the expense of the disposition; believes that witness himself employed Mr. Brodie to draw this disposition, but he is agent for the whole family; cannot tell exactly how many cottages are on the portion of the property conveyed by the disposition.

Examined for Claimants.—From the time of granting this disposition, understood the property to have been conveyed out and out to his sons, as the disposition bears, and that this was his intention, leaving it to his agent to express it in the proper manner; witness adds of himself, that he made votes in favour of strangers in the same way, which he has since withdrawn; from the date of the disposition considered his sons as having full right without any control on his part, and that they might, if they pleased, cut down the wood, the property being theirs; there was no private understanding upon the subject; from that time considered himself bound to pay his sons a fair rent; they were entitled to draw rent at Whitsunday last.

Re-examined by Objector.—Considers his sons entitled to put him out of possession, and to do every thing they like with the property; does not know whether the conveyances to strangers formerly mentioned were intimated to them, but he took away his name from these deeds; does not mean to do so with the deeds to his sons; supposes that he might also do this, but he is no lawyer.

Examined for Claimant.—When this disposition was executed, it was understood that the value was to go against his sons' claims for patrimony, whether it was entered in his books or not; when he signed the deed, he put it into Mr. Brodie's hand, as agent for the family, and considered the transaction as completed.

9068. Viscount Stormont.] Do you know whether Sir Jhon Hay was cognizant of this deed of Mr. Atcheson's?—He was not.

9069. Was he aware that Mr. Atcheson intended to grant these life-rent rights to his sons?—He was not.

9070. It did not form any part of the system on Sir John Hay's part of creating votes?—None whatever.

9071. And this was the mere act of a single individual?—Quite so.

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9072. Do

James Robertson,
Esq.

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James Robertson,
Esq.

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9072. Do you know whether, previously to the registration of 1835, either Sir John Hay or his friends ever contemplated making votes in the county?—They never did; Sir John Hay had been returned to Parliament unanimously by the county of Peebles, not only once before the passing of the Reform Bill, but twice afterwards, and he was never threatened with any contest until the summer of 1835. At this time he certainly never contemplated making votes, and he had not even a political agent to attend to his interest, it not being considered necessary for him to have one.

9073. Were there any joint tenants inrolled in 1835?—There were 17 joint tenants in 1835.

9074. Were any of these cases of assumption?—Yes.

9075. State who these were?—First, the case of James Somerville, who was inrolled in 1832, as tenant of the lands of Ladyurd, the property of Sir Thomas Carmichael; in 1835 he was inrolled as one of two joint tenants, he having, by an arrangement entered into with Sir Thomas during the currency of his lease, assumed his son James as joint tenant along with him; and in the subsequent year, 1836, the son having then been 12 months in possession, was also inrolled as one of two joint tenants.

9076. Do you know whether the son was resident on the farm?—I do not know.

9077. Was there any objection taken to these votes?—Not in 1835; it was the father that was inrolled in 1835.

9078. The son was not inrolled in 1835?—No.

9079. He was only assumed in 1835?—Yes.

9080. What is the next case?—The next cases are John Stewart, senior, and John Stewart, junior, who claimed as joint tenants of Scottson, the property of Sir Thomas Carmichael; Stewart, senior, had been previously inrolled as tenant in 1832, and they were both inrolled as joint tenants in 1835.

9081. Was John Stewart, junior, assumed by John Stewart, senior?—I have not the date of the joint tenancy right, but I understood it was executed subsequently to 1832.

9082. *Chairman.*] But it must have been granted a year before 1835?—Yes.

9083. *Viscount Stormont.*] Was that vote objected to?—They were objected to, but the objection was departed from; the declarations of the parties were taken privately at the Registration Court of 1835, to satisfy me of the claim, and I have retained no note of the alleged date of the joint tenancy.

9084. *Chairman.*] Were you satisfied at the time that it was a correct and *bond fide* transaction?—Yes; but, from what I have since learnt, I have doubts if there was any real joint tenancy prior to 1835.

9085. *Viscount Stormont.*] Were they both resident on the farm?—Yes, I believe so.

9086. Was there any proof as to share of profits?—None.

9087. What is the next case?—John Gibson was inrolled in 1832, as tenant of Skirling Mains; an agreement was entered into, in 1834, between Sir Thomas Carmichael, the proprietor, and Gibson, by which Gibson was to assume his second son, John, as a joint tenant along with him. In the year 1835, claims were lodged both by the father and son as joint tenants; the claim of the father was sustained, but the claim of the son was rejected, he having stated, when the question was put to him in court, that he did not consider he had any interest in the farm at present. In 1836, the son again claimed, and his claim was sustained; on this occasion, the case was referred to his oath, and the following is a note of his deposition taken down at the time.

9088. Taken down in 1836, or 1835?—Taken down in 1836; he was rejected in 1835. “Claimed to be inrolled last year as joint tenant; was not admitted; was not examined on oath; does not live on the farm; there are no profits on the farm at present; rent 340*l.*; never paid any rent; sometimes took a management, but not generally; his father will state if he considers him entitled to profits; never advanced any money connected with the farm, neither rent nor any thing else; sometimes buys and sells for his father; father gets all the proceeds; claimant gets none; father never accounted to him for these profits; never had any correspondence with Sir Thomas as to payment of rent or otherwise; is the second son; when his father is from home, takes a general management, and did so before he was tenant, the same as now.”

9089. After

9089. After that deposition, did the sheriff admit that claim?—The sheriff stated that he had doubts of the case; but the doubts were not sufficient to induce him to reject the claim.

James Robertson,
Esq.

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9090. *Chairman.*] Did he state any further reason?—No; that is all my note.

9091. *Viscount Stormont.*] Was there any appeal from that case?—Yes, it was appealed, but by an arrangement it was compromised; in the upper district of the county, after trying one or two cases in the Appeal Court, we compromised all the rest.

9092. One side and the other?—Yes.

9093. What was the next case?—John Hogg and William Hogg claimed as joint tenants of the lands of Shiel Green.

9094. To whom does Shiel Green belong?—To the town of Peebles; the brother of these parties was the tenant of the lands; he died some time after the passing of the Act; on his death William, the younger brother, took possession of the farm and resided there; John, the elder brother, and heir to the tack, did not take possession, and never did so reside; both claimed as joint tenants; the sheriff held there was no occupancy on the part of John Hogg, and rejected his claim; the claim of William Hogg was admitted; the judgment of the sheriff, in the case of John Hogg, was reversed on appeal, and he was admitted to the roll.

9095. What was the next case?—The next joint tenancy case, inrolled by the Whigs, was Thomas Ketchen, who was joint tenant of the lands of Huttop, previous to the passing of the Reform Bill, along with Walter Elliott; Ketchen was inrolled in 1832 as tenant, and he now claimed as one of two joint tenants, and his claim was sustained.

9096. *Chairman.*] On whose property was he inrolled?—On Sir James Suttie's.

9097. He was at that time proprietor?—Yes.

9098. Was he ever considered a Whig?—I believe not.

9099. I thought you said by the Whigs?—This claim was given in by the Whig agent.

9100. But it was constituted by Sir James Suttie?—Yes; but Ketchen was a joint tenant previous to the passing of the Reform Act.

9101. It was given in by the Whigs you say?—Yes, the claim was, in 1835, given in by Mr. Rutherford.

9102. By the Whig agent?—Yes.

9103. The person who constituted the vote was not a Whig?—The landlord who granted the tack was considered to be a Conservative, but that tack was in existence previous to the passing of the Reform Bill.

9104. *Viscount Stormont.*] It was not a case of assumption?—No.

9105. *Chairman.*] The claim happened to be given in by Mr. Rutherford, the agent who acted for Mr. Carmichael?—Yes, and that is the distinction I make between Whig and Conservative inrolments.

9106. Accordingly as they are given in by one agent or the other?—Yes, he was actually inrolled, in virtue of his subsisting lease, previous to the passing of the Reform Bill; but at that time they were all inrolled as tenants, not as joint tenants; this claim was lodged merely to obviate that objection.

9107. *Viscount Stormont.*] What were the next cases?—The next two cases inrolled by the Whigs in 1835 are those of Richard Robb and Archibald Robb; they claimed as joint tenants of the lands of Park-gate Stane, the property of Mr. Cunningham, of Hansel; neither of them were previously on the roll; their claims were not objected to, and they were admitted.

9108. *Chairman.*] Do you know when their rights were constituted?—I understand they had not the joint tenancy qualification till after the passing of the Reform Bill, but I cannot state this positively.

9109. *Viscount Stormont.*] Were either of them inrolled as single tenant on those lands?—Neither of them were on the roll before.

9110. Is Mr. Cunningham, of Hansel, a Whig?—Yes.

9111. Then you do not know when these leases were constituted?—No, I do not.

9112. *Chairman.*] What reason have you for considering Mr. Cunningham a Whig?—From my inquiries in the county; I have made very minute inquiries as to the political principles of all the voters.

9113. Has he ever voted?—No, there has been no contest.

9114. *Viscount Stormont.*] What is the next case?—The next joint tenancy cases

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cases lodged by the Whigs were those of James Paterson and William Paterson, who claimed as joint tenants of Hawkshaw.

9115. To whom does Hawkshaw belong?—Hawkshaw belongs to Mr. Stewart, a very leading member of Mr. Carmichael's committee. William was inrolled as tenant of the land in 1832; when the joint tenancy right came into existence I do not know.

9116. Did you see the lease?—I saw it at the time, but I took no note of it; it was exhibited to me privately in court to satisfy me that the claim could not be successfully opposed.

9117. You cannot state whether it was before or after 1834?—No.

9118. Do you remember whether James was assumed or not by his brother William?—No; I have kept no note of the date of the joint tenancy right.

9119. The next case?—The next case lodged by the Whigs was that of Andrew Oliver, who claimed as joint tenant of the lands of Williams Lee. These lands were held on lease under Sir James Suttie by the claimant and his brother Richard, previous to the passing of the Reform Bill, and both were inrolled in 1832 as tenant. In 1835 the Whig agent lodged a new claim for Andrew as joint tenant, and at the same time an objection to the inrolment of Richard, on the ground that he was not sole tenant, but joint tenant only along with his brother; the sheriff sustained the new claim of Andrew, and repelled the objection to Richard's inrolment, on the ground that the general description of tenant was sufficient, whether the party was sole tenant or joint tenant.

9120. *Chairman.*] This vote was by a conservative proprietor, and before the passing of the Reform Bill?—Yes.

9121. *Viscount Stormont.*] Were there any others inrolled by yourself?—I inrolled five joint tenants in 1835; the first was Walter Elliott, who was joint tenant of Huttop along with Thomas Ketchen, under Sir James Grant Suttie, in virtue of a lease granted in their favour previous to the passing of the Reform Act, as already explained. In 1832, Ketchen was inrolled as tenant of Huttop, but Elliott did not claim to be inrolled until 1835. Ketchen and Elliott are of different politics, and in 1835 a claim as joint tenant was lodged by the Whig agent for Ketchen, and I lodged a similar claim for Elliott, and both were sustained.

9122. What was the next case?—The next joint tenancy cases that I gave in were those of Alexander Mitchell and William Mitchell; they are brothers, and in the year 1831 took the land of Soohhope, the property of Sir John Hay, from Mr. Atcheson, the principal tenant, and have possessed the land ever since, under regular missives of lease. In 1832 William was inrolled as tenant; Alexander did not claim to be inrolled till 1835; in that year both parties lodged claims as joint tenants, and their claims were admitted.

9123. Alexander proved he had a joint interest with his brother?—Yes; he was examined in the Registration Court.

9124. And the lease bore date in 1831?—Yes; and he swore on oath, that he had a joint interest with his brother in the profits of the farm, and was consulted by him in regard to every transaction of importance, both purchase and sales.

9125. What was the next case?—The next case I inrolled was James Lawrie, as joint tenant with his father, Thomas Lawrie, of the lands of Spittlehaugh, under a lease dated prior to 1832.

9126. Who does Spittlehaugh belong to?—Mr. Ranken.

9127. A conservative?—Yes; James alone resided on the farm, and took the entire management, by agreement with his father, and tacit consent of the landlord.

9128. Did his father's and his own name both appear in the original lease?—I never saw the lease, but I understood it was in the father's name only; but the son was truly a joint tenant, and recognised as such by the landlord previous to 1832.

9129. *Chairman.*] When was that lease granted?—Prior to 1832.

9130. *Viscount Stormont.*] Is there another case?—The fifth case is that of William Rennie, who is inrolled as joint tenant of the lands of Cadmuir, along with his father-in-law, Thomas Paterson.

9131. Who does Cadmuir belong to?—It belongs to a great number of proprietors; it is divided into what we call "souns" in Scotland.

9132. Any others?—No, these were all the inrolments.

9133. How many joint proprietors of land were inrolled that year?—Four.

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9134. Who are they?—The four sons of the deceased Mr. Gordon, of Hallmire.
9135. Did they succeed to their father in that property?—They succeeded their father jointly to the property.
9136. Were there any others?—No other joint proprietors.
9137. Were there any joint proprietors for houses?—None.
9138. *Chairman.*] I think you have stated, that previously to the enrolment in 1836, Sir John Hay had resolved to make life-rents?—Yes.
9139. And had applied to his friends to make life-rents?—Yes.
9140. At what time did he so?—In the month of December 1835.
9141. Had you charge of those life-rents?—Yes.
9142. In what way were they constituted in general?—They were constituted by grant.
9143. Did the parties who acquired them apply to obtain them, or were they asked to take them?—I believe they were asked to take; the preliminary arrangements in regard to those executed by Sir John Hay were made by himself, with a few exceptions; in some instances I made those arrangements for Sir John, but generally speaking, I merely prepared the deeds after he settled the matter with the gentlemen who were to acquire the conveyances from him.
9144. Then you were not consulted until after the agreements were made?—Not generally by the life-renters in the first instance, but I knew perfectly Sir John's intentions, and had been previously consulted by him in regard to these life-rent conveyances; and in every case where I prepared the deed, I had the written authority of the life-renter or his agent to the completion of the transaction.
9145. He had informed you of his intention of making them?—Yes.
9146. When did he first inform you of his intention of making them?—He came to the resolution in the month of December 1835.
9147. Not sooner?—No, not sooner.
9148. How was the price settled or fixed?—The price was fixed by a table calculated by Mr. MacKean, an accountant at Edinburgh.
9149. According to the ages of the parties?—Yes; and the amount of rental.
9150. How many were made under your superintendence at that time?—Ninety-nine were made by the conservative party; not all under my superintendence.
9151. How many of these were non-resident?—Non-resident 89, resident 10.
9152. Will you furnish the Committee with a list of names, distinguishing those made on each property?—Certainly.
9153. Were any life-renters made on other properties?—There are 99 made in all by the conservative party.
9154. Were any life-renters made by the liberal party?—Yes; there were 34.
9155. Enrolled, or 34 claimed?—Thirty-four enrolled, and of these, resident 3, and non-resident 31.
9156. Were there any claims of life-renters, persons that you claimed for, that were not enrolled?—Yes, there were; there were 14 rejected.
9157. *Viscount Stormont.*] Were these Whig claims?—Fourteen conservative life-rent claims rejected.
9158. *Chairman.*] On what ground were they rejected?—The first class were William Ogilvie, William Rutherford and John Scotland; part of the land held in lease by the tenant, called Hope's Park, and which was intended to be conveyed, was by mistake left out of the conveyance, and without this part, the property claimed on was not of sufficient value.
9159. On what ground were the others rejected?—The next three were Thomas Stavett, Mr. Mitchelson, and the Hon. Captain Keith; between the date of the execution of the disposition and the lodging of the claims, one of the tenants, Alexander Elder, had died, and in the claims the subjects were described as partly possessed by the heirs of the deceased Alexander Elder; but his heirs did not possess any part of the subjects, having given up the possession on Alexander Elder's death; this want of identification the sheriff considered fatal to the claim, and they were rejected accordingly. The next three that were rejected were Colonel Rose, Mr. Nairn, and Mr. Smith; when the sale took place, two houses were possessed by Andrew Johnson and William Moffatt, rent-free, under Sir John Hay, and on the 10th of February 1836, I wrote to the agent of the life-renters the following letter, which was produced in the Registration Court: "As agent for Sir John Hay, I beg to inform you, as acting for certain parties who have lately acquired life-rent conveyances from him of subjects in the neighbourhood of

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Peebles, that there are several of the present tenants who have been sitting rent-free under Sir John Hay, and that so long as they are permitted by the disponees to remain in the houses they now occupy, Sir John Hay will pay a fair rent for them to the disponees, commencing from the term of Martinmas last 1835. For instance, for the two cottages possessed by Andrew Johnson and William Moffatt, and which have been sold in life-rent to Colonel Rose, Charles Nairn, w. s., Archibald Smith, advocate, Sir John will pay for the former 3*l.* 10*s.*, and for the latter 4*l.* of annual rent; but you will understand the different disponees above named may remove Johnson and Moffatt when they think proper; but in the event of their doing so, Sir John Hay's obligation must cease and determine." The life-renter's agent, Mr. Douglas, instead of drawing these rents direct from Sir John Hay, or his land steward, and then paying them over to the life-renters, went through the ceremony of giving the rents in the first instance to Johnson and Moffatt, as from Sir John, and then getting them back again from those parties for behoof of the life-renters. This procedure was quite unauthorized by Sir John Hay or by me, and threw some ridicule over the transaction, (which was perfectly a *bond fide* one) so much so, that the sheriff rejected the claim.

9160. Then did the sheriff reject them, not because they were bad or fictitious, but because they were ridiculous?—He gave no reason; he just rejected the claims; the decision was considered a bad one; but at the Appeal Court it was compromised along with a great many others.

9161. Viscount *Stormont*.] Do you consider it to have been a *bond fide* transaction?—Most undoubtedly.

9162. *Chairman*.] Were there any others rejected?—Yes.

9163. State them?—Sir John Hay sold, in January 1836, the life-rent of two fields near Peebles, possessed by Fraser and Blyth, to Charles Balfour Scott, with entry to the rents from Martinmas 1835; Fraser's field was a grass-park, and the rent for the year 1835 had all been paid to Sir John Hay, previous to the date of his sale to Mr. Scott; but Mr. Douglas, the life-renter's agent, was not aware of this, and he, at Lammas 1836, drew a half-year's rent, from Martinmas to Whitsunday, from Fraser, instead of getting it from Sir John Hay's factor; and on Fraser swearing to this fact, and that he also had paid the money under a mistake, the sheriff rejected the claim, the subjects not having yielded at the rate of 10 *l.* per annum for six months previous to the 31st of January 1836.

9164. Any others?—In January 1836 Sir John Hay sold, in life-rent, a field called the Damdale, to Major Pringle. A similar mistake having been committed in this as in the last case, the claim of Major Pringle was withdrawn.

9165. Were there any others?—The next case was that of Mr. Moncreiff; his claim was in like manner withdrawn, an objection having been discovered in Sir John Hay's title; the next case was that of Mr. Bliss; an objection was raised that one of the testamentary witnesses to the conveyance, in favour of Sir John Hay, had not signed the deed, and this objection was sustained; and the last case was that of Mr. Alexander Bathgate, who acquired a life-rent from his son; one word in the testing clause appeared to be written on an erasure, which the sheriff considered fatal to the claim; these are all the conservative rejections.

9166. Then if the whole of the conservative claims, supposing they had all been sustained, what would have been the number of life-renters?—One hundred and thirteen.

9167. Were there any life-renters who claimed on the other side who were rejected?—Yes, there were.

9168. State them?—Sir Thomas Carmichael bought a house in Inner Leithen, from Dr. Wilkie, in December 1835 or January 1836; he then conveyed the subjects in life-rent to the following parties: first, Andrew Robb, carrier, in Linton, and Peter Wilson, hosier, in Hawick; these parties claimed to be inrolled in 1836, but their claims were rejected for want of value.

9169. Viscount *Stormont*.] Were those life-rents purchased of Sir Thomas Carmichael?—The deed bore to be so; one of them, in favour of Andrew Robb, bore to be for a price, and when Mr. Carmichael was examined in court, he stated that it was paid for by a bill, and that the bill was no sooner put into his father's possession than Sir Thomas put it into the fire.

9170. Do you know whether Wilson paid by bill?—I do not.

9171. *Chairman*.] Any other case?—The next cases were those of Charles Williamson, merchant, Hawick, and Charles Veitch, Peebles; they acquired the right from Walter Thorburn, provost of Peebles, who conveyed the life-rent of the

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he shop where he transacted his business to these parties; both claimed to be inrolled under the conveyance, but, owing to a part of the subjects claimed on not belonging in property to Thorburn, both claims were rejected by the sheriff.

9172. Viscount *Stormont*.] Did it appear whether any cash had been paid, or bills?—From my recollection, it appeared from the deed, that the conveyance was for a price; but whether that price was paid in cash or in bills, I have no means of knowing.

9173. Was there a back tack granted to Mr. Thorburn?—Not that I am aware of; we did not go into that investigation; we proved that the parties claimed on property that did not belong to Thorburn; and we did not require to make any further investigation.

9174. Did Thorburn himself continue to carry on his business in the shop?—Yes.

9175. *Chairman*.] Any other cases?—The next case is that of Elphinstone, residing in London, who acquired a life-rent conveyance from his father of a *pro indiviso*, one-half of certain subjects in Peebles; but the father having died, and the son having claimed to be inrolled, not only under the life-rent conveyance, but as the son and heir of his father, he abandoned his first claim, and was inrolled on the second.

9176. Out of the 99 life-rent claims which you had inrolled, can you state how many were paid in money, and how many by bills, agreement or gratuity?—Six entirely paid in money; one partly in cash and partly by bill; exchanges or conveyance of land in other counties of equal value, nine; by bills, 70; by the prices being declared real burthens in the conveyances, three; for long and faithful services, four; for love, favour and affection, five; under an obligation in a deed of entail, one.

9177. Those by services were for services given by old servants?—Yes.

9178. Mr. *Fergusson*.] Do you believe the whole 99 acquired real *bond fide* interests in these possessions?—Yes, certainly.

9179. An independent *bond fide* interest in the possessions?—Yes.

9180. *Chairman*.] What proprietors were inrolled in 1836?—In 1836 there were inrolled 11 landed proprietors and 53 house proprietors, two joint proprietors of land, seven joint proprietors of houses, and two husbands of proprietrixes.

9181. How many were inrolled by you?—Altogether in 1836?

9182. Proprietors, I mean?—I inrolled landed proprietors, seven; joint proprietors of land, two; house proprietors, 14; joint proprietors of houses, two; husbands of proprietrixes, one.

9183. Was Mr. Andrew inrolled by you?—Yes, he was; and the purchase was made in January 1836.

9184. Was he assisted in obtaining his property by Sir John Hay?—Yes.

9185. In what way?—By advancing money to him.

9186. What was his property in; what was advanced?—I did not carry through the purchase myself, so that I cannot be accurate; but I think it was somewhere about 200*l.*, the value of the property.

9187. And that was advanced by Sir John Hay?—Yes.

9188. Was John Bathgate inrolled by you?—Yes.

9189. Was he assisted in acquiring his property by Sir John Hay?—When John Bathgate bought the property there was a bond over it, to the extent of 400*l.* the bond was held by Mr. Renton, a very active party on the side of Mr. Carmichael, and he, upon Mr. Bathgate acquiring the property, demanded payment of his bond, and Sir John Hay took an assignment of the bond.

9190. Was John Robertson inrolled by you?—Yes.

9191. Was he assisted in acquiring his property by Sir John Hay?—Yes.

9192. In what way?—I purchased that property; I do not know if I have a note of the price, but it was somewhere between 200*l.* and 300*l.*, and the money was advanced by Sir John Hay.

9193. Was Mr. Bliss inrolled by you?—His claim was rejected.

9194. Have these inrolments given rise to a great many questions?—Not that I am aware of.

9195. In the Registration and Appeal Courts?—A great deal of discussion.

9196. And examination?—And examinations.

9197. Can you refer to the claim of Mr. Hugh Bruce and his brother?—Yes.

9198. How did they claim?—They claimed as co-proprietors or joint owners in life-rent of an area of ground in the North Park, of Nether Bridge Lands, with

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the dwelling-houses and others erected thereon, and secondly, of a cottage and garden attached, situated at Tweed Bridge.

9199. And were they rejected?—Yes, they were rejected by the sheriff.

9200. On what ground?—I observe I have taken no note of the sheriff's opinion; he frequently does not give the grounds of his judgment, but simply rejects or admits the claim, and although I have very full notes of the proof led, I merely have "sheriff rejects;" but in a note I prepared on the case for the Appeal Court, I state the sheriff's judgment to have proceeded on the ground that a stable built on the subjects conveyed to the claimants was not erected till after the 30th January 1836.

9201. Who conveyed it to them?—Sir John Hay.

9202. Was Mr. Douglas examined?—Yes, he was.

9203. Did Mr. Douglas give evidence before the Registration Court?—He gave evidence both in the Registration Court and in the Appeal Court.

9204. And the claim was sustained in the Appeal Court?—Yes, sustained in the Appeal Court.

9205. Was there a material discrepancy between Mr. Douglas's evidence in the Registration Court and the Appeal Court?—None whatever, so far as I could discover.

9206. Did the sheriff observe, that if the same evidence had been given in the Registration Court that afterwards was given in the Appeal Court, that it would have sustained the claim?—I do not remember that he did; in our Appeal Court, the sheriff who gives the original decision has no voice, and so far as I remember they never do take any part; they have no voice in the Appeal Court.

9207. But do they not state their opinion?—No, they do not, so far as I remember.

9208. Mr. *Fergusson*.] In the case where Sir John, having advanced money, accepted the assignation of the bond, was the money a gift, or did he receive a security?—He received a legal bond; he took an assignation of the property in security of his advance.

9209. It was not a gift then?—No; I may mention that the three cases already specified are the only instances where Sir John Hay made any advance to any individual.

9210. The property for which the bond for 400*l.* was one; what might be the value of that property?—It was bought by Mr. Bathgate for 490*l.*

9211. Therefore the value, above the obligation of the bond, only amounted to 90*l.*?—Yes.

9212. In the Registration Courts, do they ever make it a question, not of the value of the premises, but the beneficial interest that the occupiers may have in the property?—No, because it has been held by the registration sheriffs all over Scotland, that, although the property be burthened to its full value, the party is entitled still to be inrolled.

9213. Therefore a pauper occupying a house, value 10*l.*, is entitled to a vote on that house?—Yes, if he stands inrolled as a voter on that house.

9214. Being in his circumstances a pauper?—Yes, certainly.

9215. *Chairman*.] Are you aware that the creation of life-rent votes, such as you have described, is going on now?—I believe it is.

9216. Is there any new mode of constituting it which is coming into practice, of which you are aware, or are they formed merely in the same way as those which you have been examined with regard to?—I believe in the same way.

9217. Viscount *Stormont*.] The agent for the Whig party inrolled or claimed for many proprietors of houses in that year?—Yes.

9218. These were most of them new purchases?—The great majority of them were new purchases.

9219. Have you any reason to doubt that these purchases were paid for by persons in whose name they appeared to be purchased?—From my knowledge of a great many of the parties who claimed on such houses, I would say they were not in a situation to advance the money themselves, and that they must have got assistance.

9220. Do you know of any person who assisted them?—No, I do not; I should imagine that they would get assistance from Mr. Carmichael or Sir Thomas Carmichael.

9221. You cannot state any case of your own knowledge, where either Sir Thomas Carmichael or Mr. Carmichael paid a sum of money for any person purchasing

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chasing a house?—There are two cases where I think it is plain that the money was advanced, one that was admitted, and one that was rejected.

9222. What cases are those?—The case of Grieve of the old town of Peebles, who was admitted to the roll.

9223. Was that in 1836?—Yes.

9224. Will you state the particulars of that case?—I lately purchased his property, and I could not get delivery of the title-deeds from Mr. Fotheringham, the writer, in Peebles, who is the political agent of Mr. Carmichael, until I repaid certain advances which had been made to Grieve to enable him to finish the building on his property.

9225. Did it appear then by whom the money had been lent?—No, it did not.

9226. Did you call for the production of many of the title-deeds of these properties?—Yes, we did.

9227. In whose custody did they appear to be generally; were they in the custody of the proprietor or the custody of the political agent?—They were all produced by the political agent; and I have reason to believe they remain in his custody to this day.

9228. Do you state that to be a fact?—No, I cannot say I know it to be a fact, but I have every reason to believe that the title-deeds of the great majority of the purchasers have remained in the possession of Mr. Fotheringham.

9229. For what purpose would they remain in the hands of the political agent?—If advances have been made by Mr. Carmichael or his father, or their friends, which I suppose is the case, the title-deeds would be retained in the custody of Mr. Fotheringham for their security.

9230. Would it not be more natural for the proprietors to have the custody of their own title-deeds?—Certainly it would.

9231. Is it for that reason that you think it probable that sums of money have been lent in order to effect the purchase of these different properties?—Both for that reason and from being satisfied that many of these claimants were not in a situation to pay the price themselves.

9232. Are many of the claimants in that rank and condition of life, that you would think it improbable that they should be able to pay the money which they appear to have done in effecting these purchases?—I think there are a great many of them.

9233. Are there any of these purchasers who are in any way connected with Sir Thomas Carmichael?—Yes, there are several of them; there is Thomas Mill, overseer to Sir Thomas Carmichael; and there is William Napier, butler to Sir Thomas Carmichael.

9234. What house did William Napier buy?—He bought houses in Linton, from Robert Cleghorn, for 200 *l*.

9235. What is the rental of that house?—The rental at the time of the purchase was 10 *l*. net, under the burthen of the feu-duty; an additional house was built in January 1836, to make up the value; the wood for these buildings was furnished from the estate of Sir Thomas Carmichael, and delivered by his tenants.

9236. Are there any others who are in the employ of Sir Thomas Carmichael, who at this time purchased houses, about the same period?—There is James Proudfoot, Sir Thomas Carmichael's carpenter, at Castle Craig.

9237. Did he purchase houses about December 1835 or January 1836?—He purchased houses in Linton in December 1835, from James Bain.

9238. Is there any other?—I do not think there any others immediately connected with Sir Thomas Carmichael.

9239. Do you know a person of the name of Thomas Borrowman, who purchased property at that time?—Yes; he formerly possessed property at the Old Bridge at Peebles.

9240. Do you know whether that original property was burthened?—I understood it was.

9241. To the full amount?—I do not know if to the full amount; but it was burthened; and he acquired in December 1835 or January 1836 additional subjects in Peebles.

9242. Was he a person who you should suppose was likely to have money at command, to buy these additional subjects?—I should think not, from the circumstance stated of there being a bond on his original property.

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9243. Do

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9243. Do you know a property that Robert Wilson bought?—He bought a property in Peebles in December 1835 or January 1836, from Mr. Scott, for 220*l.*, on which he was inrolled in 1836.

9244. Was this Wilson a person in good circumstances, who was likely to have 220*l.* to purchase a house with?—I would rather not answer these questions; and would suggest that the facts can be got at much better by examination of the Whig agents.

9245. It is only with regard to your impression, whether they were persons likely to be able to purchase property to that amount?—I have already stated that I think there are a great many parties who were inrolled by the Whigs in 1836, who were not in a situation to purchase their properties; but I would rather decline specifying their names. The parties from whom you will get the requisite information, are Sir James Gibson Craig, Mr. Rutherford and Mr. Fotheringham.

9246. Mr. *Fox Maule.*] Were any of the same description inrolled by the Tories?—I have already stated all those who were inrolled by the Conservatives.

9247. There were some?—Two.

9248. *Chairman.*] Will Mr. Carmichael be equally able to give information?—I do not know.

9249. Viscount *Stormont.*] Is Sir James Gibson Craig the agent for Mr. Carmichael?—Sir James Gibson Craig is the private agent of Sir Thomas Carmichael and his son, and must know every thing about their money matters.

9250. *Chairman.*] Is that merely your conjecture, or have you any reason for supposing that Sir James Gibson Craig knew of any of these transactions?—I have been told that a great part of the money that was remitted to Peebles, at the time these purchases were going on, was remitted through the house of Sir James Gibson Craig to Mr. Fotheringham.

9251. Do you believe it to be true?—Yes.

9252. Do you mean remitted in each particular case, or generally he remitted Mr. Fotheringham such money as he might require?—I was told in the months of November and December 1835, and January 1836, when these purchases were made, that there were a great many remittances came through the bank at Peebles from the house of Sir James Gibson Craig to Mr. Fotheringham, in sums of 200*l.*, 300*l.*, and 400*l.*, just as the purchases were made; that is my reason for saying Sir James Gibson Craig and Mr. Fotheringham are the parties who will give you the information.

9253. Are you of opinion that money may be advanced to enable persons to be inrolled as voters, to make purchases, without there being any opportunity of discovering it in the course of the examination before the Registration and Appeal Courts?—Certainly.

9254. Then you are of opinion that the examination before the Registration and Appeal Courts are not sufficient to prevent such a proceeding, which you consider improperly going on?—The examinations, both before the Registration and Appeal Courts, are perfectly sufficient under the statute; as it is not necessary to deduct burthens on the property held, we never go into that investigation, because it would be useless; and even although, on the face of the deed, the property appears to be burthened to its full amount, the claimant is entitled to be admitted to the roll, according to the decisions of all our sheriffs.

9255. Viscount *Stormont.*] Therefore, if you made it appear that either of the candidates had paid the whole sums for these purchases, that would not affect the vote?—Not in the slightest.

9256. Would it not be considered a strong feature in a vote, with regard to its being a real vote, or held in trust, or fictitious?—Yes, it might be so considered; but under the Reform Act it would not be inquired into at all.

9257. It would be competent to inquire into it, if it was considered of importance?—I think not.

9258. Have such inquiries ever been excluded by the sheriff?—Before I was appointed a political agent, that matter was settled by the unanimous judgment of the sheriffs in the district where I practise.

9259. In what case?—I do not know the cases, but it was considered quite settled, and therefore there was no occasion to enter into the inquiry; I have seen cases where the full price was declared a real burthen on the conveyance, and proved on the face of the deed, and no objection was taken, because it was of no use to take the objection.

9260. Mr.

9260. Mr. *Fergusson*.] And therefore, for illustration's sake, if 50 voters, being themselves paupers, were to go to an election, and 49 other voters, being persons of large unburthened properties, that the majority of one, the whole of the voters of that class being paupers, would of course carry the election?—A majority of the voters on the roll who come to the poll, whether rich or poor, will always return the Member.

James Robertson,
Esq.

9 May 1837.

Veneris, 12^o die Maii, 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.

Viscount Stormont.

THE LORD ADVOCATE IN THE CHAIR.

Archibald Swinton, Esq., called in ; and Examined.

9261. Sir *Hugh Campbell*.] HAVE you had an opportunity since you were last before the Committee of consulting the sheriff's notes in order to see whether you are correct in the statements you made as to some points on which you said Mr. *Crawfurd* was inaccurate?—Yes ; since I was examined before the Committee ; I have received from Scotland a full copy of the sheriff's notes, taken in the inferior court, and which were produced as evidence before the appeal court, and on comparing those notes with the statements I made to the Committee, I find that they were quite correct.

Archibald Swinton,
Esq.

12 May 1837.

9262. Are there any other inaccuracies in Mr. *Crawfurd*'s evidence which you wish to point out?—Yes ; Mr. *Crawfurd*'s evidence is incorrect, both as to dates of many of the bills in the life-rent cases, and as to the condition in life of the claimants ; their expectation to be called upon to pay their bills, and their ability to do so.

9263. What bills are you referring to?—Mr. *Crawfurd* says (at No. 7039) that a great proportion of the bills were at 12 months' date, and were not due at the time that the voters were inrolled ; now almost all the bills granted by the parties admitted on the life-rent qualification alone were bills or rather promissory notes, payable one day after date ; the only bills granted by the claimants of this class, which were proved to be payable in 12 months, were those granted by Mr. *Davidson*, land surveyor, in regard to whom I formerly stated my belief that he had paid the bill, on its becoming due, by the two Messrs. *Begg*, to their father, and by a Mr. *Anderson*, banker in *Thurso*, who bought from the former proprietor a life-rent right to the house which he occupied ; the bills granted by the five parties, admitted partly on the life-rent qualification and partly on the property previously held in fee, were at 12 months ; and it is those Mr. *Crawfurd* must have had in view.

9264. What have you to state with reference to the condition of the life-renters and their ability to pay their bills?—Mr. *Crawfurd* states generally, at 7028, 7041, 7205, 6975, 6976, that the life-rent claimants were not in a situation which led him to suppose that they could pay their bills, and that several of them acknowledged that they had not provided funds to do so ; now, the facts are, that all the claimants on life-rent, whether in sole or in part, were parties of whose ability to pay their bills there can be no doubt ; I mentioned formerly the names and conditions in life of the parties who claimed on life-rent qualifications alone ; all the parties in this class who were examined on the subject were fully aware of their liability for the contents of their bills, and the only two individuals who stated that they had not made arrangements for paying them, or who appeared to expect that payment might very probably not be demanded, were the two *Beggs*, and they admitted distinctly that if their father should request payment of their bills, they must either re-convey the property, or sell it to raise money to meet the bills ; then, as to the parties in regard to whom a small life-rent qualification was necessary to complete the value of the property they previously held in fee, the sums for which they had granted bills were very small, varying from 15*l.* to 35*l.* ; of the five, *James Gireve*, the shepherd (to whose case Mr. *Crawfurd* specially refers), had paid for his life-rent before his claim was lodged ; *William Campbell*, mason, has since paid his bill on its becoming due ; *Peter Brown*, carpenter, and *John Campbell*, tailor, stated distinctly their expectations that payment would be demanded, and their intention and ability to pay ; and the only individual whose ability to pay

Archibald Swinton,
Esq.

12 May 1837.

at the time the court was sitting was doubtful was Donald Swanson, who stated that he had not altogether provided funds for the purpose, but that he certainly expected that payment would be demanded; the amount of his bill was 35*l*.

9265. You mentioned in your evidence that there was one claimant rejected for not appearing on reference to oath; what were the circumstances of that case?—The party's name was Alexander Waters; he had a property of his own in the town of Thurso, of the annual value of 10*l*. 3*s*., from which a feu-duty of 3*s*. 4*d*. fell to be deducted; so that his property was within 4*d*. of the requisite value; to meet which deficiency he had purchased from Mr. Smith a life-rent of the yearly value of 1*l*. 7*s*. The objection of nominal and fictitious was urged against his claim as well as against that of many of the other claimants, and a reference made to his oath, and he not having appeared, was held confessed and rejected accordingly.

9266. Do you think that is a case that shows the inexpediency of reference to oath or not?—I humbly think that that is a very strong case, in addition to those which I mentioned formerly, illustrating the inexpediency, I might almost say injustice, of the rule which I explained to have been laid down by the Inverness Appeal Court in regard to the reference to oath.

9267. Have you any other reasons besides those you have stated for knowing that claimants resident at a distance were summoned to attend on reference to oath solely, in order that their inability to attend might be made the ground of their rejection?—One of the agents of the liberal party was incautious enough to admit, in open court, that although a great number of conservative claimants had been required to attend upon a reference, it was only against those whom they knew could not attend that they intended to persist in that requisition.

9268. *Chairman.*] Who was that agent?—Mr. Sutherland, writer to the signet.

9269. In what court was that?—In the Court at Wick, I think. Mr. Crawford heard the remark made, and was quite aware that it was made.

9270. Do you believe that persons have not been summoned by the conservative side in the same way?—I never saw it done, and never was a party to advising it.

9271. Do you suppose that counsel ever advised it on either side?—I do not know; it is only in a court where the doctrine which prevails in the Inverness Court is received, that it can have any effect. I explained before, that the Edinburgh and other Appeal Courts allow a reasonable excuse for the absence of a claimant to be received as an apology for his non-attendance.

9272. *Sir Hugh Campbell.*] Who were the three parties whom you mentioned as having been admitted on the same deed on which Mr. Robert John Gunn was admitted?—They were Colonel Campbell, Mr. Shiells and Mr. Darling.

9273. Were those parties in precisely the same situation as Mr. Gunn was?—Precisely; the whole price was 420*l*., and they had each granted a bill at one day's date, for a share proportionate to their respective ages.

9274. Were any of them examined on a reference to oath, as well as Mr. Gunn?—Mr. Darling was; and stated that he had granted the bill merely as the voucher of his debt to Mr. Horne; but had afterwards debited himself with the price in the accounts between him and Mr. Horne. Mr. Shiells, who is the political agent, was in court, but was not examined, and Colonel Campbell had received from the objector notice to appear on a reference, but from his being resident at a distance, and the mistake in all the notices of that kind, which I formerly explained, he was not held confessed for not appearing.

9275. What reason do you give for Mr. Gunn being examined, when so many other parties were not examined?—My belief is, that he was selected because he was a younger and more inexperienced man, and one who it was believed (as it turned out rightly enough) would be more easily confused by an able cross-examination; his father had died a few days before, and I have myself no doubt that this circumstance was founded on, by the local agents, as likely either to prevent his attendance, and thus lead to his rejection as confessed, or to make him more easily agitated and confused.

9276. *Chairman.*] How many were not examined?—I cannot say exactly, without consulting my notes more fully; I should think not half of those who attended; for instance, Mr. Rose, who came from Edinburgh, and assisted me in the registrations solely in consequence of his having been required to attend, was not examined on a reference, nor was Mr. Murdoch.

9277. Who is Mr. Murdoch?—A fish-curer in Wick; Mr. James M'Larin, schoolmaster, was not examined; neither was Major Williamson, Mr. Walter Grieve or Mr. M'Lachlan, banker, in Wick.

9278. Who

9278. Who were examined?—Mr. Davidson, land-surveyor, was examined very shortly, chiefly in regard to the mode in which he had paid for his right; the two Messrs. Begg, to whom I referred as having procured a life-rent from their father, were also examined.

9279. You say Mr. Grieve was not examined?—He was asked a single question; it was in regard to him that I stated in the former part of my evidence that he was asked a single question in a passing way, without the oath being administered; at least, I think this was the case in regard to him; Mr. Anderson, banker, in Thurso, was also examined, but I have reason to believe, from the circumstance of an accidental delay having taken place in his attending the court, and from the very slight examination to which he was subjected, that it was done in the expectation that he, like Mr. Waters, might possibly have been rejected for not appearing; those were all the parties who claimed on life-rent alone whom I find from my notes to have been examined; the parties who had procured small life-rents to complete the value of their other property, were all examined on a reference, and I believe for the same reason that Mr. Gunn was, namely, that it was believed they were parties who would be easily confused by a cross-examination.

9280. Were they not all examined in chief?—By cross-examination, in the sense I have used it, I mean not what is generally so called in a court of justice, because, undoubtedly, both the examination in chief and what I call the cross-examination were conducted by the same counsel.

9281. Sir *Hugh Campbell*.] Were there any other claimants besides those you have mentioned, whose claims may be said to have been nominal and fictitious?—There were a considerable number of leaseholders, chiefly, I think, tenants of Lord Duffus, who were rejected in consequence of not having been in possession for the statutory period, and who, by claiming the franchise as tenants, may be, I think, said to have assumed a fictitious character; some of those parties were from various circumstances in such peculiar positions, that unless there had been a very vigilant local agency for the conservative party, they would in all probability have been admitted, although they had no right under the statute.

9282. Are there any points in your evidence which you wish to explain?—I find I spoke from misinformation, when I told the Committee that I thought that entail proprietors had granted life-rents either in Roxburghshire or Selkirkshire; I have since learned that in one of those counties the point was fully argued and that the court decided against the power of entail proprietors to grant life-rents.

9283. *Chairman*.] Have you had occasion to know whether votes were created by back tacks being granted by the person acquiring the franchise to the proprietor giving the conveyance?—In the case of a purchase of a life-rent by myself, to which I referred on my former examination, I granted a back tack, that is to say, a lease for my life to the party from whom I had purchased the life-rent.

9284. And who is to pay you rent?—And who pays me 10*l.* a year.

9285. Did you grant it singly or along with others?—Singly, and I paid for it in cash.

9286. Have you known other cases?—I know some others.

9287. Has it been a common practice?—I have heard it spoken of, but my own was the first case in my experience, and I have not heard of many since.

9288. Have you known many cases where voters have been created by granting a fifty-seven years' lease, or a life-rent with a 10*l.* interest?—No, I do not think I ever heard of any such.

9289. Would not that be a very easy mode of creating votes?—I should think it might.

9290. Are there any other modes besides those to which you have referred in your evidence, of making conveyances or grants for the purpose of creating votes?—I have heard of what I consider by far the most objectionable mode of such conveyances; I mean the purchase of property burthened with debt; the consequence of which is, that the parties acquire a vote without paying almost any thing, or perhaps without paying any thing at all.

9291. Are there any other modes of such conveyances besides those you have mentioned?—I do not know if it exactly meets the question, but votes may be created by the assumption of joint tenants, with regard to which I have not been examined, and there may be other modes of creating votes.

Mercurii, 17^o die Maii, 1837.

MEMBERS PRESENT.

Sir Hugh Campbell.

Viscount Stormont.

THE LORD ADVOCATE IN THE CHAIR.

*James Robertson, Esq. called in; and further Examined.**James Robertson,
Esq.**17 May 1837.*

9292. *Chairman.*] HAVE you any explanation to make of your former evidence? —I think it necessary, to prevent misconception, to explain one part of the evidence I gave on a former day; I was asked, in question 9138, and the following questions, when Sir John Hay resolved to make life-rents; and also when he applied to his friends to make them; and my answer was, "In the month of December 1835." In giving that answer, I understood the questions to apply solely to the case of Sir John Hay and his friends creating life-rent rights over their estates; for I had, on the 18th of November preceding, purchased the lands of Lynedale, on which seven life-rent qualifications were afterwards made; but this purchase was made by me without any instructions from Sir John Hay, and even without his knowledge; the seven gentlemen paid the value of their life-rents, and Sir John Hay, who, after the sale, agreed to purchase the fee, as the property adjoined his Linton estate, paid the balance of the price, and the title was taken directly from the sellers to the seven gentlemen in life-rent, and to Sir John Hay in fee, and they were thereafter infeft in the land for their respective interests in life-rent and fee; the arrangements in this instance with the life-renters were all made by me, and Sir John Hay had nothing to do with them; and I can produce to the Committee, if required, a scheme of the division, of the price made out by me on the 28th of January 1836, according to which the transaction was settled with the seller. In those circumstances, I did not consider the questions put to me as embracing this purchase, and I shall regret if I misapprehended the questions.

9293. What led you to make that purchase for Sir John Hay without instructions?—I did not make it for Sir John Hay, I made it on my own responsibility.

9294. What led you to make that purchase?—There had been a previous purchase made by Mr. Carmichael, of the lands of Eastsands Park, in the end of September or the beginning of October, upon which it was currently reported that life-rents were to be created; when the lands of Lynedale came into the market I was instructed by a gentleman to make inquiries regarding those lands, with a view to the purchase, and it was only on the morning of the sale that he made up his mind not to become the purchaser; and I then requested a friend, Mr. Innes, writer to the signet, to purchase the lands of Lynedale for myself.

9295. Were you instructed to purchase them by the person who afterwards gave up the intention?—I was not instructed to purchase; I was instructed to make inquiries only with a view to purchase; inquiries as to rental, title, and upset price.

9296. Was that as an ordinary purchase, or in order to make votes?—It was with the view of making votes for himself and his sons, but only if he could get a good investment for his money.

9297. When were you first instructed by that client to make inquiries with a view to purchasing those lands in order to make votes?—A very short time before the sale; I think only a few days before it.

9298. *Viscount Stormont.*] It was subsequent to the purchase of the Eastsands property?—Yes, long; more than a month.

9299. *Chairman.*] You made the purchase yourself, with the intention of making votes?—Yes.

9300. Did you apply to the persons to take those votes, or did they apply to you?—I applied to two of them; the other five applied to myself, and after the numbers were filled up I had two other applications for life-rents; they are the first

first seven names in the first of the lists I have prepared by the instructions of the Committee; I wish to add, that I would not have made the purchase had it not been for the previous purchase of Eastsands Park by Mr. Carmichael.

James Robertson,
Esq.

17 May 1837.

[The Lists were delivered in.]

PEEBLES.

LIST of CONSERVATIVE LIFE-RENTERS enrolled in 1836.

1. Mr. Pattison's trustees sold the lands of Lynedale to the following gentlemen in life-rent, and to Sir John Hay in fee:—

Patrick Robertson, advocate.
William Halliday, of Rosebank.
William Stuart, writer to the signet.
James Robertson, of the British Linen Company.
John Waugh, farmer.
William Hay, teacher.
Robert Duncan Douglas, Peebles.

2. Sir John Hay sold life-rent rights to the following parties:—

John Borthwick, of Crookston.
Alexander Pringle, of Whitebank.
George Thomson, of Burnhouse.
Robert Grant, of Kincorth.
Adam Urquhart, advocate.
Robert Scott Moncrieff, Edinburgh.
James Hamilton Dundas, writer to the signet.
James Rose, writer to the signet.
Alexander Cunningham, Carterhaugh.
James Erskine, of Shielfield.
Hugh Bruce, advocate.
William Bruce, wine-merchant, Leith.
Robert MacQueen, of Braxfield.
Harry Inglis, of Logan Bank.
John Inglis, advocate.
John Maitland, writer, Edinburgh.
Alexander Cunningham, writer to the signet.

3. Mr. MacKenzie, of Portmore, sold life-rent rights to the following parties:—

Sir John Hope, of Craighall, baronet.
Archibald Hope, younger, of ditto.
John David Hope, wine-merchant, Leith.
Hugh Hope, Edinburgh.
George William Hope, barrister.
Robert Dundas, of Arniston.
William Pitt Dundas, advocate.
Captain Henry Dundas, R.N.
William Stuart Walker, of Bowland.
General Sir James Russell, of Ashysteel.
Thomas Tod, of Drygrange.
Henry John Burn, writer to the signet.
George Irving, ditto.
Douglas Cheape, advocate.
Sir David Dundas, of Dunira, baronet.
James Robertson, writer to the signet.
James Wedderburn, Edinburgh.
William Sharpe, writer to the signet.
John Forbes, of the Coldstream Guards.
Charles Scott, Melsington.
Thomas Scott, his eldest son.
Sir John S. Forbes, of Pitsligo, baronet.
William Grieve, Branxholm Park.
George Pott, of Todrig.

4. Mr. Forbes sold life-rent rights to the following parties:—

Charles Edward Allen, writer to the signet.
James Anstruther - ditto - ditto.

James Robertson,
Esq.

17 May 1837.

Andrew Bonar, banker.
John Bonar, of Ratho.
Robert Blackwood, bookseller.
William Burn Callender, of Prestonhall.
Robert Dundas Cay, writer to the signet.
E. M. G. Colquhoun, advocate.
George Cumming, writer to the signet.
James W. Drummond, younger, of Hawthornden.
Stewart Baillie Hare, of Calderhall.
Allan Elliot Lockhart, of Borthwickbrae.
William Maule, of Kilumny.
John Hall Maxwell, younger, of Dargavel.
William Maxwell, younger, of Cardoness.
Captain Alexander Miln, R.N.
William Robertson, younger, of Kinlochmoidart.
John Spens, M.D.
Nathaniel Spens, writer to the signet.
James Tytler, of Woodhouselee.

5. Mr. Allan, of Glen, sold life-rent rights to the following parties :—
Alexander Allan, advocate.
Major George Allan.
Mark Sprot, of Riddle.
James Sprot, of Spott.
Mark Sprot, of Garnkirk.
John Sprot, E.I.C.S.
Thomas Sprot, writer to the signet.
John J. Macbraire, of Fishwick and Tweedknow.
James A. Cheyne, writer to the signet.
Thomas Johnstone, of Underwood.
Alexander Campbell, brewer.
6. Mr. Berresford, of Macbiehill, sold life-rent rights to the following parties :—
William Ponsoby Barker, of Kilcoolly Abbey.
Rev. Chas. C. Berresford, Drumlane.
Barker Thacker, Ballymellish.
Robert Fowler, Rathmelione.
William Tod, Macbiehill.
7. Sir James Montgomery conveyed life-rent rights to the following persons :—
William Bertram, Lodge, Stobo Castle.
Peter Macarter, ditto.
James Grieve, Stobo Mill.
8. Mr. Ranken, of Spittlehaugh to—
Thomas L. Veitch, writer to the signet.
William Fergusson, surgeon.
9. Ewart's Trustees, to—
Theodosius Ewart, writer.
10. Adam White, of Drummelzier, to—
Alexander Stevenson, writer to the signet.
11. John White, of Netherurd, in favour of—
Adam Sim, of Coultermains.
12. Sir George Clerk, in favour of—
James Clerk, his eldest son.
13. Mr. Loch, of Rachan, in favour of—
William Bell, advocate.
14. James Spalding, Peebles, in favour of his three sons :
William Spalding, Peebles.
Thomas Spalding, ditto.
Francis Spalding, ditto.
15. Thomas Tennant, Whitfield, in favour of his two sons
Robert Tennant, Whitfield, and
William Tennant, grocer.

TOTAL NUMBER - - - - - 99.

PEEBLES.

P E E B L E S.

James Robertson,
Esq.

17 May 1837.

LIST of WHIG LIFE-RENTERS enrolled in 1836.

1. Mr. Carmichael, younger, of Castle Craig, conveyed life-rent rights to the following parties, viz.

William Gibson Craig, younger, of Riccarton.
 James Thomson Gibson Craig, W. S.
 George Dalziel, W. S.
 David Cormach, writer, Edinburgh.
 Maurice Lothian, solicitor, Edinburgh.
 John Lothian, ditto.
 Walter Adam, M. D., Edinburgh.
 James Anderson, leather-merchant, Edinburgh.
 John Clerk Brodie, W. S.
 James Crawford, advocate.
 James Butler Crease, merchant, Edinburgh.
 Peter Crooks, W. S.
 John Black Gracie, W. S.
 Alexander Jamison, merchant, Edinburgh.
 James Bruce Jardine, merchant, Glasgow.
 Peter Lamont, brewer, Edinburgh.
 John Lees, tobacconist, Edinburgh.
 Augustus Maitland, W. S.
 Thomas Mansfield, accountant, Edinburgh.
 George Meikle, merchant, Edinburgh.
 Andrew Miller, ditto.
 Adam Patterson, W. S.
 Ralph Richardson, tobacconist, Edinburgh.
 John Riddle Stoddart, W. S.
 James Gibson Thomson, merchant, Edinburgh.
 Robert Thomson, linen-merchant, Edinburgh.
 William Wemyss, Deputy Commissary General, Edinburgh.

2. Sir Thomas Carmichael, in favour of—
 George Rutherford, writer, Edinburgh.
3. Dr. John Renton, in favour of—
 James Montgomery, residing at Whim.
4. John Fotheringham, writer, Peebles, in favour of—
 John Wilson, advocate.
5. John Patterson, ironmonger, Peebles, in favour of—
 Alexander Ker, flesher, Selkirk.
6. James Gray, Peebles, in favour of—
 Alexander Gray, Peebles.
7. Peter Jackson, residing at Stane, in favour of—
 William Jackson.
8. James Mitchell, Peebles.

TOTAL NUMBER - - - - - 34.

9301. Viscount *Stormont*.] Had you received any instructions from Sir John Hay to purchase property for the purpose of making life-rents?—None.

9302. What instructions did you receive from Sir John Hay when you became his political agent?—The instruction I received originally, when I became his political agent, was to proceed to Peebles-shire, and attend to the registration of 1835, and to the canvass which was then going on in the county in consequence of Sir Thomas Carmichael having started his son as a candidate in opposition to Sir John.

9303. From the view you then took of the state of the roll, did you conceive it was not necessary for Sir John Hay to create votes?—It was reported to me by Sir John Hay's committee, that Sir John had the support of at least two-thirds of the constituency then on the roll, and the necessity of Sir John or his friends purchasing or selling property to support his interest did certainly not at that time occur.

9304. Was there any thing, during the canvass of Sir John Hay, that led either you or Sir John to think that purchases of property might be necessary for the purpose of creating votes?—Yes; on the 15th day of September 1835 I accompanied Sir John Hay to the house of Mr. Mackintosh, of Lamancha, a gentleman understood to be in the interest of Mr. Carmichael; on that occasion we found sitting with him Mr. William Gibson Craig, the Whig candidate for the county of Edinburgh,

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burgh, and Mr. Alexander Graham, of Limekilns, two gentlemen who had been residing with Sir Thomas Carmichael for some months, assisting him in his son's canvass; when those two gentlemen took their leave Mr. Mackintosh informed Sir John Hay, in my presence, that they had urged him to cut up his estate into 10*l.* life-rents.

9305. Do you mean by those two gentlemen, Mr. William Gibson Craig and Mr. Alexander Graham?—Yes; and that on his refusing to do this, they then pressed him to join in a joint-stock purchase of an estate, to the value of between 20,000*l.* and 30,000*l.*, in order to split the whole into life-rents, and thereby effectually swamp Sir John Hay; but that he, Mr. Mackintosh, had also positively refused to enter into this proposal.

9306. Did this information induce Sir John Hay or his friends to purchase property, or to sell any part of their own estates in life-rent?—No, it did not, but it had the effect of making me watch very narrowly the proceedings of my opponents.

9307. What was the first purchase made in the county, by either party, for any political purpose?—The first purchase was Eastsands Park, by Mr. Carmichael from Mr. Samuel Graham, at the price of 2,200*l.*

9308. *Chairman.*] What was the rent?—I cannot tell the rent; it must have been about 70*l.*, for there were six life-rent votes put upon it.

9309. Who were the six life-renters?—William Gibson Craig, the younger, of Riccarton; James Thomson Gibson Craig, w. s.; George Dalziel, w. s.; David Cormack, writer, Edinburgh; Maurice Lothian, solicitor, Edinburgh; and John Lothian, solicitor, Edinburgh.

9310. *Viscount Stormont.*] When was that purchase made?—It must either have been made in the end of September or the beginning of October, because the purchase was intimated to Sir John Hay in the beginning of October by Mr. John Forrester; and Sir John Hay, on the 13th of October, acknowledged the receipt of the intimation.

9311. Who is Mr. John Forrester?—He is a writer to the signet in Edinburgh, and was employed to attend to that part of the county in which Eastsands Park is situated.

9312. This was an intimation in the course of business?—It was; that this purchase had been made by Mr. Carmichael.

9313. Did that determine Sir John to counteract the exertion of his opponents by similar purchases?—Sir John Hay, in his answer on the 13th of October, said, that the information contained in the communication required much consideration; that his canvass was going on admirably; that the Whig purchasings proved this; and that so soon as he had completed his canvass he would consider what was proper to be done.

9314. Did Sir John Hay give you any instructions to purchase any property?—None at that time.

9315. But you purchased Lyncedale solely on your own responsibility?—Entirely.

9316. Was Sir John Hay aware that you were about to purchase it before you did purchase it?—No, he was not; I came to the resolution of purchasing it only on the morning of the purchase; the sale took place in Edinburgh by public roup, and Sir John Hay was residing at the time at King's Meadows in Peebles-shire.

9317. How soon was Sir John Hay made aware that you had made this purchase?—I have no memorandums to enable me to answer the question with accuracy.

9318. Did you communicate it to him?—I think it extremely likely that I communicated it to him immediately.

9319. What was the next purchase made in the county for the purpose of creating life-rent qualifications?—The next purchase made in the county of Peebles for that purpose, was the lands of Kilbucho by Mr. Carmichael; this purchase took place on the 17th or 18th December 1835.

9320. What was the price of that?—The price was 6,400*l.*

9321. How many life-renters were enrolled upon those lands?—Twenty-one.

9322. Will you state their names?—Walter Adam, m. d., Edinburgh; James Anderson, leather-merchant, Edinburgh; John Clark Brodie, w. s.; James Crawford, advocate; James Butler Crease, merchant, Edinburgh; Peter Crooks, w. s.; John Black Graicie, w. s.; Alexander Jameson, merchant, Edinburgh; James Bruce Jardine, merchant, Glasgow; Peter Lamont, brewer, Edinburgh; John Lees, tobacconist, Edinburgh; Augustus Maitland, w. s.; Thomas Mansfield, accountant, Edinburgh; George Meikle, merchant, Edinburgh; Andrew Miller, merchant, Edinburgh; Adam Patterson, w. s.; Ralph Richardson, tobacconist, Edinburgh;

Edinburgh; John Riddle Stoddart, w. s.; James Gibson Thomson, merchant, Edinburgh; Robert Thomson, linen-merchant, Edinburgh; William Wemyss, Deputy Commissary General, Edinburgh.

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Esq.*

17 May 1837

9323. Are any of those gentlemen resident in the county?—None

9324. Have any of them any connexion with the county?—None.

9325. When did you know that this purchase had been made?—I was made aware of it immediately after the purchase by Mr. Forbes, the son of the proprietor, who had sold the property.

9326. Had this sale any effect upon your proceedings?—I had previously been impressing on Sir John Hay and Mr. Mackenzie of Portmore, the necessity of their selling parts of their lands in life-rent with a view of qualifying the purchasers as voters in the county, in order to neutralize the tactics of our opponents; they were very unwilling to do this, but the Kilbucho purchase, and the numerous other small purchases reported at the same time to have been made by the Whig party, at length determined them to make the sales recommended by me; and subsequently Mr. Forbes of his own accord, on the 26th of December, consulted me as to the sale of life-rents over his lands of Slipperfield; and Mr. Allen, of Glen, on his return from the Continent on the 19th of January 1836, resolved on making similar sales of parts of his lands of Glen.

9327. What were those other small purchases to which you have adverted?—They were in number 26; they consisted chiefly of houses in the town of Peebles, and in the villages of Inverleithing, Linton and Carlops.

9328. Were those the properties you mentioned the other day as being purchased by persons who were not supposed to have the money wherewithal to pay for them?—A good many of them.

9329. It was generally believed that those purchases were paid for by money advanced by the Whig party?—Yes.

9330. If it had not been for those purchases by the Whig party, should you, as Sir John Hay's political agent, have considered it your duty to recommend to him to create life-rent votes?—I should not have considered it my duty to have done so, for the reason already stated, that Sir John and his friends considered that they had a very large majority of the existing voters; and had it not been for those purchases and sales by the Whig party, I am confident that no life-rents would have been created either by Sir John Hay or any of his friends in the county.

9331. If the natural constituency of the county has been swamped by these proceedings, to which party do you attribute that?—To the Whig party.

9332. *Chairman.*] Was Mr. Aitcheson of the Whig party?—No.

9333. He is of the Conservative party?—Yes.

9334. Are you not aware that Mr. Aitcheson had made seven votes on his property in favour of seven sons, and that he had also made votes in several other instances before this?—I was perfectly aware that Mr. Aitcheson had made seven life-rents in favour of his sons, and that he had also made a conveyance to five other gentlemen of a similar description; and I am equally aware that Sir Thomas Carmichael had previously in the year 1834 conferred a life-rent qualification upon his son, and that those proceedings were all adopted long before there was any contest in the county; I am also aware that the conveyances by Mr. Aitcheson were not made in concert with Sir John Hay or any of his friends, or even with their knowledge.

9335. Are you of opinion that the conveyance that Sir Thomas Carmichael made in favour of his son, Mr. Carmichael, of 200 *l.* a year of the entailed estate, was a transaction, similar to those other transactions, of creating life-rents, giving a 10 *l.* interest?—I have already explained in my evidence, that I had no knowledge whatever of the nature of Mr. Carmichael's interest in the lands of Skirling; I know nothing of the matter, but what I see from the register, where he is enrolled as a life-renter.

9336. Supposing it to be a transaction by which Mr. Carmichael got 200 *l.* a year from his father of the entailed estate, of which he is heir-apparent, do you consider that a similar transaction with the other transactions to which you have referred, of grants of life-rent of 10 *l.* a year to strangers?—I see no distinction, except that Mr. Carmichael had a larger interest in the estate than a man who has merely a 10 *l.* interest; in both cases they are life-rents created by a father in favour of his sons.

9337. Do you think both are of the same nature?—I see no distinction, except as to the amount of rental.

9338. Do you suppose any person would give that amount of rental, 200 *l.* a year, for the mere purpose of creating a vote, when the vote could be equally

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created by giving 10*l.* a year?—He certainly could have created a vote by making a smaller conveyance.

9339. Then, if it was a larger conveyance than was necessary to create a vote, and such as was not unsuited to the circumstances of the parties, as a provision for the eldest son, is it not a different transaction from one merely for creating a vote?—That must depend very much upon the situation of the parties themselves; in Sir Thomas Carmichael's case, I presume, he had not made any other provision for his son, who was a young man; in the case of Mr. Aitcheson, he had already put all his sons into the world, and having a considerable estate in the county, it was natural that he should wish his sons to be freeholders; and I may add, that I should doubt extremely whether the conveyance would have been made by Sir Thomas Carmichael in favour of his son but for the purpose of conferring the franchise upon him.

9340. Have you any doubt that he really receives the sum of money conveyed by that deed?—I answered that question on a former occasion, that I had neither any doubt that he did receive nor that he did not receive it; I had no knowledge whatever of the transaction.

9341. Viscount *Stormont*.] Do you know of any instance of a father giving his son a life-rent for the sake of an allowance, and not of a political franchise?—None have come under my own observation.

9342. Did you ever hear that it was usual to do so in Scotland?—No, I cannot say that I ever have.

9343. *Chairman*.] Has it been unusual, in entailed estates, for the father to give a son a part of the entailed estate?—It is quite competent to a father to do so, but I have not seen any instances of it myself.

9344. Is there any other explanation of your former evidence you wish to make?—Yes; I was asked in question 9205, whether in the case of the Bruces there was not a material discrepancy between Mr. Douglas's evidence in the Registration and the Appeal Court; and my answer was, "None whatever, so far as I could discover;" to that answer I adhere; and I think it is due to Mr. Douglas to state, that in my opinion he gave the most unimpeachable evidence throughout, both in the Registration and the Appeal Court; in the case of the Bruces, some of the facts were, no doubt, more clearly brought out in the Appeal Court than they were in the Registration Court; this frequently happens; and in this way; an objection is stated in the Registration Court, of which the claimant was not previously aware, and he cannot meet it, at the moment, as it ought to be met in evidence; but in the Appeal Court he is then acquainted with the facts, and leads his evidence accordingly.

9345. In Mr. Douglas's case, did not he swear in the Registration Court that the stable was included in the lease?—No, he did not; I have very full notes of the whole case, taken at the time, and he did not state that it was included in the lease.

9346. Or that it formed part of the lease?—No.

9347. What did he say with regard to the stable?—All he said, in regard to the stable, was this, that he gave directions for the stable in April or May, and it was finished in June.

9348. Did he not say it was part of the subjects let?—No, I speak from a note taken at the time.

9349. Have you any further explanation to give regarding that case?—No.

9350. What facts were brought out in the Appeal Court from Mr. Douglas's evidence, that were not brought out in the Registration Court?—There was a much more minute examination as to the stable than there was in the Registration Court, and the facts, in regard to the building of the stable, and the arrangement with Sir John Hay, and the connexion with it, were more distinctly proved in evidence.

9351. Have you still no recollection of any observation made by Mr. Wood, the sheriff, at the Appeal Court, on that subject?—No, I have no recollection of any observation of the nature referred to on my former examination; but such an observation might have been made, from the circumstance that I have already stated, that a case often assumes, from the manner in which the evidence is brought out, quite a different complexion in the Appeal Court from what it did in the Registration Court.

9352. Did the sheriff in the Registration Court appear to form his opinion on the ground that the stable was included in the case, and had been built within six months of the registration?—I have kept no note of the sheriff's judgment, and therefore I cannot be accurate in answering the question, but in a note which

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I prepared of the case for the Appeal Court, I state the sheriff rejected the claim on the ground that the stable was not built previous to January, although it was proved by the production of the receipt for rent the subjects had yielded the sum required by the statute.

9353. Then, according to that note, you were at the time of opinion that the sheriff's judgment rested on the stable not having been built in sufficient time?—Yes.

9354. Did Mr. Douglas swear in the Appeal Court that he was to pay the same rent whether the stable was built or not?—He swore that no mention was made of the stable when the 15*l.* rent was fixed, that he was not bound to pay any separate rent for the stable, and that the building of the stable was a subsequent arrangement between him and Sir John Hay.

9355. Have you any thing further to state upon that subject?—No.

9356. How many life-renters were made by the Conservative party?—Nineteen.

9357. How many for Sir John Hay?—Seventeen on his own property; there were also the seven to which I have referred, made on Lynedale, where Sir John Hay acquired the fee.

9358. How many were made by Mr. Mackenzie, of Portmore?—Twenty-four.

9359. How many by Mr. Allen, of Glen?—Eleven.

9360. How many by Mr. Forbes?—Twenty.

9361. How many by Mr. Spalding?—Three.

9362. How many by Sir James Montgomery?—Three.

9363. How many by Mr. Berresford?—Five.

9364. How many by Mr. Tennant?—Two.

9365. How many by Mr. Rankin?—Two; and by Mr. Loch, Mr. White of Drummelzier, Mr. White of Netherurd, Mr. Ewart's trustees, and Sir George Clerk, one each.

9366. Was there also one by Mr. Turnbull?—I have classed Mr. Turnbull's son not among the life-renters, but as a proprietor, for this reason, that he had a property of his own in the town of Peebles, which he held in fee; and in order to complete his value, his father conveyed to him a life-rent of an additional subject. But as the principal part of his property is held in fee, I have not put him down as a life-renter; he is enrolled as a proprietor of one subject, and as a life-renter of another subject; I have included in this list only those I enrolled myself; Lord Elcho was enrolled by Lord Wemyss's private agent, and not by him as a political agent.

9367. Was Lord Elcho enrolled in the county in 1835?—Lord Elcho claimed in 1835, as the eldest son of a peer, without any other qualification; his claim was rejected, in the first instance, by the sheriff; but it was admitted on appeal.

9368. Did you conduct the appeal?—Yes, I did, for Lord Elcho.

9369. You were successful in that appeal?—I was.

9370. Who were the sheriffs who determined that?—I have kept no note; but so far as I recollect it, he was admitted to the roll by sheriffs Boswell and Miller; and sheriff Rutherford concurred with Mr. Wood, the sheriff of Peebles-shire.

9371. How came Lord Elcho to claim again after having been already placed on the roll by the judgment of another court?—I represented to Lord Elcho, through a friend of his, that the judgment was not considered a sound judgment, and that I would recommend his lordship to claim anew, as a proprietor under the 7th section of the Statute, which he did accordingly, and he was enrolled in 1836 as a life-rent proprietor of property acquired from his father.

9372. You mentioned, in answer to question 9176, that 70 of the Conservative life-renters settled the prices of their life-rents by bill; do you know how the interest on those bills has been paid?—I believe, in most instances, the interest has not yet been paid; in a good many of them, payments have been made to account of the different bills, and had it not been for this inquiry, either the interest, or payments to account of the principal sums, would have been made in all of them before this time; but when this Committee was moved for, I determined in no single case to ask either for payment of the principal or interest; and except in the cases where the parties came forward of their own accord to make payments, no payments have been asked or made.

9373. Where the payments of interest have been made, have they been made from the rents?—The payments have been from the funds of the parties, without reference to the rents; they have been in general much greater than the rents, and in a few instances the interest of the bills only have been paid.

9374. Have any of the bills been paid out of the 70 cases?—None, in the whole; but some have been paid in part.

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9375. Can you state to what extent they have been paid?—So far as I know, there has been about 300*l.* paid to account of those bills.

9376. How much was the whole amount of the bills?—I cannot answer that question without calculation; they must amount to several thousand pounds.

9377. Do the original proprietors still continue to manage the estates they have conveyed in life-rents?—No, they do not; they are totally divested of all management, and the properties have ever since those life-rent sales been managed entirely by the life-renters through their own agents.

9378. Who pays the public burthens?—The fiar is bound in the conveyances, in all the cases, to pay the public burthens, and the only burthen which is payable by the life-renter is the feu-duty specified in the deeds, and those feu-duties have been paid to the fiars.

9379. Does the person holding the fee pay the public burthens, though he has conveyed the whole property in life-rent?—Yes, the subjects conveyed in life-rent have always formed a part only and generally a very small part of the estate; there is no instance of a proprietor selling his whole property in life-rents; and for the sake of convenience he has invariably, in Peebles-shire, become bound to pay the public burthens, and his being so burthened was considered an ingredient in the original transaction.

9380. In those transactions was any regard paid to prior heritable rights in settling the price of the life-rents?—No.

9381. Have infeftments passed on any of those life-rent conveyances?—Infeftments have passed on the life-rent conveyances to Lynedale, but not in any of the other instances.

9382. At whose expense were the deeds of conveyance prepared?—They were at the expense of the life-renters.

9383. In those transactions for whom did you act, for the life-renters or for the proprietors, or for both?—In most cases I acted for both; in a few instances the life-renters employed their own agent.

9384. You were a common agent, both for the persons who granted the life-rents and for the persons who received the life-rents?—Yes, generally I was.

9385. Is it usual in transactions in Scotland for the same person to act both for the seller and the purchaser?—Not in the ordinary course of business; but in cases of this description it is very common to go to the political agent for the county, as it is supposed from his knowledge and experience that the deeds will be more accurately framed.

9386. In answer to question 9165, you have referred to the case of Mr. Bliss; did he desire his claim to be withdrawn?—The case was tried in court and was rejected.

9387. Did he not instruct you to withdraw his claim?—No; after the case was decided I received a note from Mr. Bliss in court, that he did not wish the case appealed, and I accordingly did not appeal it.

9388. Do you know on what ground he did not wish it appealed?—I do not; he did not state to me any ground in his note; I remember his note perfectly well; he said for reasons he would state afterwards to me, he did not wish his case appealed; but I never saw him afterwards, and never received any explanation.

9389. In your answers to question 9210, and the following questions, you have referred to property bought by Mr. Bathgate, where the value, above the obligation of the bond, amounted to only 90*l.*; was the 90*l.* paid by Mr. Bathgate in that case?—It was paid, in the first instance, as sworn to in the evidence, by Mr. Bathgate granting his bill to the trustee for his father's creditors; but previous to the meeting of the Registration Court, the sum in the bill had been paid to the trustee.

9390. Do you know how it was paid?—At that time I had business accounts with Mr. Bathgate; it was not convenient for him to pay the money at the time, and I advanced it for him; but in settling my accounts afterwards, he has repaid me my advance from his own funds.

9391. You have made out two tables for the use of the Committee, showing the number of votes enrolled in the years 1832, 1833, 1834, 1835, and 1836, and the nature of their qualifications?—I have.

9392. You have also made a table showing the present constituency?—I have.

9393. Do you consider those tables as accurate?—I consider them quite accurate, and by those tables the present constituency appears to be 568.

[The same was delivered in.]

TABLE

TABLE, showing the Number of Voters enrolled in the County of Peebles, in each of the Years 1832-3-4-5-6, including those since dead and denuded.

Enrolled in	DESCRIPTION OF VOTERS.										WHEREOF RESIDENT AND NON-RESIDENT.									
	TOTAL in each Year.	Old Roll.	Enrolled on old Qualification.	Owners.	Joint Owners.	Life Renters by Office, Marriage, or Succession.	Life Renters by Constitution.	Tenants, £.50 Qualification.	Joint Tenants.	Tenants, long Leases, 57 Years or upwards.	TOTAL in each Year.	Old Roll.	Enrolled on old Qualification.	Owners.	Joint Owners.	Life Renters by Office, &c.	Life Renters by Constitution.	Tenants, £.50 Qualification.	Joint Tenants.	Tenants, long Leases, 57 Years or upwards.
1832 -	300	48	-	88	-	7	-	157	-	-	947	53	19	29	-	71	17	-	-	-
1833 -	46	-	-	20	-	3	2	14	-	1	35	5	-	-	16	4	-	1	14	-
1834 -	13	-	-	4	-	1	2	5	-	-	7	6	-	-	-	-	1	1	5	-
1835 -	113	-	2	28	4	12*	7	37	17	6	91	22	-	2	19	9	11	1	6	1
1836 -	277	-	-	64	9	5	134	47	18	-	121	156	-	-	43	21	3	2	13	15

* One of these enrolled as a Peer's eldest son.

TABLE, showing the present Constituency, May 1837.

	DESCRIPTION OF VOTERS.										OF WHOM RESIDENT AND NON-RESIDENT.									
	TOTALS	Old Roll.	Enrolled on old Qualification.	Owners.	Joint Owners.	Life Renters by Office, Marriage, or Succession.	Life Renters by Constitution.	Tenants, £.50 Qualification.	Joint Tenants.	Tenants, long Leases, 57 Years or upwards.	TOTALS.	Old Roll.	Enrolled on old Qualification.	Owners.	Joint Owners.	Life Renters by Office, &c.	Life Renters by Constitution.	Tenants, £.50 Qualification.	Joint Tenants.	Tenants, long Leases, 57 Years and upwards.
Sum of Enrolments, 1832-3-4-5-6 -	743	48	2	204	13	28	145	260	35	8	501	242	19	29	6	7	24	4	16	129
Deduct— Disfranchised by death, expungement and denuding, and Re-enrolments -	175	10	-	62	-	11	3	86	1	3	146	29	4	6	-	9	2	-	2	83
Remains Constituency at May 1837 -	568	38	2	142	13	17	143	174	34	5	355	213	15	23	6	7	15	2	16	127

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9394. Viscount *Stormont*.] Have you, during your practice in Registration Courts, thought of any remedy for checking the creation of votes, either of fee or life-rent, which might in any respect be considered colourable or suspicious?—Yes, I have considered the subject particularly since this Committee was moved for.

9395. Is there any remedy you can suggest to the Committee?—I have not been able to discover any remedy, but making it imperative upon the claimant to be enfeoffed in the subjects claimed on, and to prove a clear 10*l.* interest, after deducting all real burthens; in this way no man could get on the roll without having a *bond fide* interest in the subjects claimed on; at present he may, without having any substantial interest at all, the debt often exceeding the value of the whole property.

9396. Would you recommend that such burthens should be deducted in estimating the value?—Yes, because I see no other mode of checking the creation of colourable qualifications.

9397. Would enfeoffment not be a sufficient check without the deduction of burthens?—It would be no check at all, except as a matter of expense, which is so trifling that it would be quite inoperative.

9398. What would be the expense of enfeoffment on a subject of the value of 10*l.*?—I had an account lately rendered to me by the town clerk of Peebles for two enfeoffments; the expense of one came to 3*l.* 15*s.* 7*d.*, and the other to 4*l.* 15*s.* 6*d.*; and taking the average of the two, I would say the expense of such an enfeoffment, within burgh, would come to 4*l.* 5*s.* 6*d.*, and beyond burgh perhaps a little more, say 4*l.* 10*s.* to 5*l.*

9399. *Chairman*.] Was each enfeoffment in favour of one individual?—Yes.

9400. Viscount *Stormont*.] What was the value of the subject on which enfeoffment had been taken?—Between 200*l.* and 300*l.*

9401. *Chairman*.] What would be the expense, suppose an enfeoffment were made in favour of 21 persons?—The expense of enfeoffment always depends, to a certain extent, on the value of the property, and therefore upon a subject on which 21 persons could be enrolled, the enfeoffment would come to something more.

9402. Something more upon the whole; but how would it be to each?—The expense to each would be very trifling.

9403. You consider the taking enfeoffment would be no material obstacle to the creation of life-rents or other votes, further than the expense with which it was attended?—I think it would not.

9404. Viscount *Stormont*.] Might not means be found for diminishing the expense of enfeoffment?—A measure was introduced some years ago into Parliament having that object, but it was found to be surrounded with difficulties, and was finally abandoned; but there is one item of the expense, the stamp, which it is of course in the power of Government to reduce.

9404*. That is a small portion of the expense of enfeoffment, is it not?—I should think about one-fifth, or scarcely so much, in a small subject.

9405. *Chairman*.] If there was any measure adopted by which enfeoffment was not to be taken on the ground, but merely at the public registry, that would diminish the expense materially, would it not?—Certainly it would; and I believe that was one of the suggestions in the measure I have alluded to.

9406. Viscount *Stormont*.] Supposing that the registration of a disposition was held equal to enfeoffment, what effect would that have?—The difficulty lies here; in a disposition there are often separate rights conferred on different parties, and enfeoffments frequently follow on the deed, for one special purpose only, neither embracing nor intended to embrace the other rights carried by the disposition.

9407. If there were separate records for registering dispositions for the Registration Courts, would that obviate the difficulty you have mentioned?—In my opinion it would create confusion, and lay the foundation of much litigation; having one law and practice in Registration Courts, regulating the feudal title, and another law and practice every where else; if therefore such a change of the law is to be made as making the recording of dispositions equivalent to enfeoffments, I think the change should be made applicable to the conveyance of real property generally, without any distinction.

9408. What would be the expense of recording a disposition?—That, of course, would depend upon the length of the deed; say, perhaps, from 1*l.* to 2*l.*

9409. You

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9409. You say enfeoffments would be no check, but as a matter of expense; why so?—Because the parties with whose money the property was bought would immediately take an heritable bond from the nominal purchaser, on which he could take enfeoffments in his own favour, and thus secure himself from the slightest risk or loss.

9410. How does the party secure himself from risk under the present system, where enfeoffment is not taken?—I have no personal knowledge of the matter, not having made any votes of this description; but I understand the title-deeds are retained in the possession of the political agent of the candidate, who has made the advance of money, so that the subject cannot well be either sold or burthened with debt by the nominal purchaser, without his knowledge.

9411. In these circumstances, would not the ordinary creditors have an equal right to the property with the party who had advanced the money to make the purchase?—Most certainly.

9412. There is a risk attending this system which you understand to prevail at present?—Undoubtedly there is; but men will rather run that risk than have the exposure of the heritable bond on record, which must be the result of the purchaser's enfeoffment.

9413. There would be no risk if the purchaser was enfeoffed?—None at all; for then the party advancing the money would secure himself, as I have stated, by enfeoffment also.

9414. Why would he do that?—Because the purchaser's enfeoffment does away with the security he previously had by retaining possession of the title-deeds, which, although not a complete security, would in most instances answer the purposes of the lender.

9415. Enfeoffment, without proof of burthens, would not check the creation of nominal or colourable qualifications?—No, it would only make the nominality more glaring and public on the face of the records of the country, nothing more; and I do not think that that is advisable.

9416. If real burthens are not to be deducted, you see no use in enfeoffment?—If burthens are not to be deducted, enfeoffment would not in any shape prevent the creation of fictitious qualifications. It would no doubt secure the publication of the conveyance, and thus the rights of third parties could not be defeated by collusion between the grantor and grantee.

9417. But on the supposition that the qualification was entirely nominal, the lender of the money having an heritable bond for the full price paid, the rights of third parties would not be worth preserving?—They certainly would not.

9418. Would there be any hardship in requiring enfeoffment to be taken in every case?—None whatever, if followed up by a proof of burthens, so as to give a security to the real constituency against the creation of fictitious votes; but I think the hardship would be very great to insist on enfeoffment without such proof, thus putting the claimants on property not fictitious to a considerable expense without in any shape checking the evil complained of.

9419. Do not purchasers require in every case to be enfeoffed for their own security?—Enfeoffment is not absolutely necessary, and in many cases is not resorted to, although no doubt it is a wise precaution, in order completely to protect the grantee's right; but if he chooses to remain unenfeoffed I do not think he should be compelled to enfeoff himself in order to enable him to claim in a Registration Court, unless you follow it up with requiring a proof of burthens in order to check the creation of fictitious qualifications; the enfeoffment of itself being no check at all.

9420. You say that in practice enfeoffment is not resorted to in many cases; what generally is the nature of these cases?—I have known small properties remain for a long time in families without any titles being made up, and I have also known properties, more particularly houses, repeatedly transmitted from one party to another by purchase, without enfeoffment, the purchasers having confidence in the sellers.

9421. Were the sales you allude to made before the passing of the Reform Bill?—Yes.

9422. The Reform Bill has not introduced any new practice in this respect?—Most certainly it has not.

9423. On whom would you throw the proof of burthens, on the supposition that enfeoffment and deduction of all real burthens is to be required?—If the burthens did not appear on the face of the deeds claimed, on the proof of other burthens

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existing, being of a negative description, might very properly be thrown on the objector.

9424. What proof would you require?—I think it would be sufficient for the objector to produce a certificate under the hand of the keeper of the records, of the existence of a recorded enfeoffment, constituting a real burthen.

9425. Might not that burthen have been subsequently discharged?—Certainly; but in that case the claimant would only have to produce a recorded discharge, which he must have in his possession, and which ought, in every case, to be put up with his titles; and this would cost him nothing.

9426. Would it not be sufficient to deduct the burthens only which appear on the face of the deeds claimed on, and which are there made a burthen on the claimant's right?—No; for in that case no burthen would in future appear on the face of the conveyance; such a regulation could easily be evaded.

9427. Have you known cases of parties being enrolled where the full price was declared a real burthen on the conveyance?—Yes; such burthen not forming a deduction in estimating value, in the opinion of our sheriffs.

9428. If Parliament were to declare that such burthens were in future to be deducted in estimating value, you say the law could be evaded; how could the law be evaded?—Simply by acknowledging the receipt of the price in the deed, and taking the conveyance to the purchaser in the ordinary way; and at the same time taking an heritable bond from him on the full price thereof in favour of the seller; on which, when enfeoffed, the seller would be as completely secured as if he had declared the price a real burthen on the disposition.

9429. Does your opinion, that it would be right to throw the proof of burthens not appearing on the face of the deeds on the objector, apply equally to the case of a life-renter and a fiar?—Yes; I see no distinction between them.

9430. What is the nature of a life-rent right in lands by the law of Scotland?—It is laid down by all our institutional writers, that a life-rent is truly a feudal right, resembling property, which constitutes the life-renter *interim dominus*, or proprietor for life.

9431. Is he entitled to all the fruits of the subject during his life-time?—Yes, but he must use his right *salvâ rerum substantiâ*, so as to leave the subject life-rented in as good condition as he found it, without encroachment upon or diminishing any part of the fee; for instance, he cannot cut down old timber. On the other hand, he cannot be deprived by the fiar of the full use of any part of the life-rented subject, even although it has been intended merely for ornament; for instance, a fiar cannot cut down trees in an avenue or park, by which a life-renter must lose the pleasure resulting from their beauty and ornament.

9432. While the life-renter is entitled to all the fruits of the subject, is he liable to the payment of all the annual burthens?—Yes, he is; he pays ministers' stipends, schoolmasters' salary, poor's-rates, cess and land tax, and all other public and parochial burthens.

9433. Who is entitled to exercise the right of patronage, the fiar or the life-renter?—It was decided in the case of the Duchess of Roxburgh, in 1818, that the right of patronage was in the life-renter.

9434. Have life-renters all the remedies of the law competent to proprietors against the tenant in the possession of the lands to enforce payment of the rent?—I know no distinction in law between the case, as put, of a life-renter and fiar; they can equally enforce payment of their rent from the tenant.

9435. Can a life-renter do so on his disposition without infeftment?—Yes, he can; in one case, which has already occurred in Peebles-shire, the tenant was sequestered at the instance of the life-renters, in order to preserve their right of hypothec over the stock and crop, and in that case they were not infeft.

9436. Can a life-renter remove a tenant in the same way as a fiar?—Yes, they are here again precisely in the same situation; to enable a fiar to prosecute a removing, he must produce, as his title, his infeftment in the lands, and so must a life-renter.

9437. What is the precise effect of an infeftment taken by the holder of a life-rent right?—Infeftment, whether in fee or in life-rent, renders the right real and public to the world, and thus effectual against all third parties, and indefeasible except by conveyance and infeftment in case of fees, and renunciation, in the case of life-rents; and these infeftments and renunciations must again be recorded in the same register as the original infeftment itself.

9438. *Chairman.*] You have stated that by law the life-renter pays all the public

public burthens ; you observe in your evidence that in the life-rents in which you have been employed, the public burthens were not paid by the life-renter ?—They were not paid by the life-renter, and the reason of that was, that the subjects conveyed in life-rent formed only a small part of a large estate, and that as the public burthens were in the different instances trifling, it would have created some difficulty to have had the burthens paid by the life-renters.

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9439. Are you of opinion that life-rents are equally legal, although the life-renter is freed from paying the public burthens ?—Certainly.

9440. You do not consider it a necessary ingredient in the legality of the life-rent, that the public burthens should be paid by the life-renter ?—Certainly not.

9441. Viscount *Stormont*.] In those cases you mention, was not the life-renter answerable by law for the public burthens ?—He was.

9442. If there had been a proceeding at law for the recovery of those public burthens, that would have been against the life-renter, and not against the *fiar* ?—It must have been taken in the first instance against the life-renter, and he would have had his recourse against the *fiar*.

9443. *Chairman*.] In your opinion, the legal estate in those cases of the life-renters, was to be computed minus the public burthens ?—No, I would consider that the legal estate was under the conveyance.

9444. Do you think that by the conveyance they were liable for the public burthens ?—No ; by the conveyance they were not liable for the public burthens ; but they were, for instance, legally liable to the minister and to the schoolmaster for stipend and salary ; but then they had their recourse against the *fiar*, the grantor of the conveyance.

9445. The estate actually conveyed to them is subject by law to those public burthens ?—Yes, it is.

9446. Then they have only a personal obligation against another party for the public burthens ?—A personal obligation under the conveyance ; nothing more.

9447. They have no absolute right to those public burthens, but are liable by the title they receive to pay them ?—Under that conveyance the life-rent right was more valuable than it would have been if there had been nothing said about public burthens, because the grantor, as the conveyance is taken, is bound to see the burthens paid.

9448. If the conveyance gives him an estate which by law is liable to public burthens, though that conveyance contained an obligation on another party to pay those public burthens, is that estate to be computed as minus the public burthens which it is liable by law to pay ?—I would say certainly not ; it is not uncommon in Scotland, when a party sells a property, that he takes upon himself the obligation of certain parts of the public burthens, for instance, to relieve the purchaser of all future augmentations of stipend.

Veneris, 19^o die Maii, 1837.

MEMBERS PRESENT.

Mr. Dunlop.
Mr. Bingham Baring.
Sir Hugh Campbell.

Lord Viscount Stormont.
Mr. Walter Campbell.

THE LORD ADVOCATE IN THE CHAIR.

James Robertson, Esq., again called in ; and further Examined.

9449. Lord *Stormont*.] DO you consider the granting of a bill in Scotland equivalent to a payment in cash ?—Yes, a bill at sight or at one day's date has all the legal consequences of a cash payment, supposing solvent parties, and I have reason to know at the same time that such an obligation is considered by Scotch merchants in the ordinary course of business as equivalent to a cash payment.

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9450. Is there any difference between the legal effects and privileges of a bill in Scotland and England ?—Several very material points of difference ; I understand that in England it is not competent to use summary diligence on a bill, but that it merely affords ground for an ordinary action ; if this be so, the bill in every case where the action is defended, becomes no longer a liquid obligation, but merely evidence of the existence of the debt sued for.

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9451. How then would you proceed upon a bill in Scotland?—In Scotland a bill when due is a liquid document of debt, and requires no action to make it available; the proper means to recover payment from the acceptor or any other party against whom recourse is preserved is to protest the bill, to register the protest, and on that registered protest to raise letters of horning, which within the space of six days will enable the pursuer of the diligence to attach either the person or the estate of the debtor.

9452. Is not the procedure now stated the proper means of enforcing a decree in Scotland?—It is.

9453. Has a bill, then, all the force of a decree?—It has precisely the same force after it is protested for non-payment, and the protest recorded.

9454. Has a bill the same force as a personal bond?—Precisely the same.

9455. Is a bill in Scotland as much a liquid document of debt as a personal bond in England?—So far as I understand the English law on this subject, a bill is much more privileged in Scotland than a bond in England, though regularly signed, sealed and delivered, for the creditor in an English bond is still necessitated to commence a suit and obtain a judgment of a court of law in his favour before he can attach the debtor's person or estate; but a bill in Scotland requires no decree of a court to render it effectual, but may be enforced without any previous procedure, by means of the most summary diligence known in our law.

9456. You are aware that in England, under warrant of attorney, a bond with judgment is in effect a warrant for diligence without any action?—Yes; and I understand a bill in Scotland to be exactly equivalent to a bond with judgment in England.

9457. Does this privilege of a bill depend on common law or on a statute?—On statute; the Scotch Acts, 1681, chapter 20, and 1696, chapter 36, and the British Statutes, 5 George III., and 12 George III., chapter 72, (both of which last are limited in their operation to Scotland) confer on all bills and promissory notes the privileges above described.

9458. Is there any other bond or written obligation in Scotland equivalent to an English bond with judgment?—Yes, a bond with clause of registration.

9459. Can you explain that?—The general principle of law is, that no creditor can use diligence on his obligation without the previous sentence of a judge. But where the grantor of a bond consents to the insertion of a clause, allowing it to be registered in the books of any competent court, that registration is held equivalent to a judgment of the court, and authorizes summary diligence. Bills of exchange and promissory notes, by their structure, are incapable of containing a clause of registration, but the same privileges are conferred on these writs by the statutes above recited, as if they contained a clause of registration.

9460. Then in Scotland a bill has the same force as a bond with clause of registration?—Precisely the same.

9461. You have said that payment of a bill is enforced by summary diligence; can this diligence not be impeded or interrupted by any legal process?—All diligence in Scotland is liable to suspension, and in this respect bills stand precisely on the same footing with decrees and bonds with clause of registration; but suspension is a summary process, and will not be entertained by the court unless the grounds of suspension be instantly verified, and caution found for the payment of the debt with costs. Besides, the non-onerosity of the bill or any other relevant objection of this kind can only be proved by writ or oath of the party.

9462. Is the granting or indorsing of a bill as much a cash payment as the delivery or indorsation of a banker's note?—Precisely the same; in fact, the latter is just a bill passing by indorsation like any other bill; it is liable to the same objection, and can be enforced only by the same diligence; in short, there can be no difference created between the two except by making the banker's note a legal tender, and then, after all, the private merchant's bill may (and if he be a good name will) be *de facto* just as much a legal tender as if it had been made so *de jure*.

9463. Would you take a bill in Scotland in payment as readily as a banker's note?—Certainly, if there were good names on the bill. On the same principle I would not accept the notes of a suspected banker.

9464. Did you ever know of any case previous to the passing of the Reform Act, where the price of an heritable subject was paid by bill?—Yes; in the ordinary course of my professional duty on examining a set of title-deeds lately, I found the purchase-money of 1,590*l.* paid thus; by bill 390*l.*, and by bond 1,200*l.*, together 1,590*l.*

9465. Does

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9465. Does this appear on the face of the conveyance?—Yes; I hold the conveyance in my hand; it is dated in the year 1808, and the price is there declared to have been paid as I have mentioned, and the purchaser fully discharged of the price accordingly.

9466. If the bill for 390*l.* had not been paid, could the seller have had recourse against the property for payment?—He would have had the same recourse that any ordinary personal creditor would have had; but he would no longer have had a preferable security; having discharged the price and delivered the conveyance, his claim came to be totally disconnected from the property, and he would have no better claim under his bill, than if it had been granted for a personal instead of an heritable subject.

9467. Have you known any other instances of the price of an heritable subject being paid by bill, previously to the passing of the Reform Act?—Yes; in 1827 I purchased a property for an employer for the sum of 1,300*l.*; 300*l.* of which was paid in cash, and 1,000*l.* by a bill.

9468. Did you take an infeoffment on the conveyance in favour of the purchaser?—Yes, immediately.

9469. Has that bill been paid?—No; it remains as a loan on personal security to this day.

9470. Is it common in Scotland to borrow money on bills?—Nothing so common; particularly small sums, as a permanent investment, and often large sums also; but these, I believe, are chiefly as temporary loans.

9471. You have been in the habit of lending money in that way yourself?—Frequently; and that in sums from 100*l.* to 2,000*l.*

9472. Suppose the purchaser to grant a bill for the price of a property, and that he returns the disposition after its delivery to the agent of the holder of the bill for the purpose of registration, would that agent be entitled to retain the disposition until the bill was paid?—No, he would not; the deposition of the disposition created no security for the payment of the bill, and the disponent, or his creditors, could compel its delivery.

9473. In practice, the agent who gets the disposition in these circumstances for the purpose of registration, grants an obligation to return it after the close of the Registration Court?—Yes, I do so in every instance.

9474. Has the objection of nominal and fictitious frequently been taken in the courts since the passing of the Reform Bill, and in such cases has it been sustained?—It has been frequently expressly taken in the schedule of objections, and a proof of the objection admitted by the registration sheriff; but a proof of nominality is equally competent, although the objection is not expressly taken. In practice, it has been held sufficient to aver that the claimant has not been a proprietor of the subjects claimed on, and under this general objection, it is competent to prove that the claimant's title is nominal and fictitious.

9475. Have you yourself ever succeeded in establishing such an objection?—Yes; for instance, in the case of John Dixon, in 1836; in that case, Dixon, a labourer, in Peebles, purchased, in December 1835, or January 1836, a house from his father for 160*l.*, and Mr. Fotheringham, the Whig agent, at the same time, purchased in Dixon's name a house in Peebles, from a person of the name of Ker, for 50*l.*; Dixon had no money, and it is understood Mr. Fotheringham paid the price to Ker; Dixon claimed to be enrolled on both those subjects in 1836; but his claim was rejected; the tenant of the property purchased from Ker, when examined, swore that Dixon refused to take the rent when it became due, and said the property was Fotheringham's and not his, and the rent was actually placed in the hands of a third party, where it remained for several months, till Dixon's scruples were removed; this case was considered as a fictitious one, and was rejected accordingly by the sheriff.

9476. Have you ever succeeded in any other cases which have been rejected as colourable or fictitious on the one side or the other?—I do not at present remember of any others.

9477. Have many joint-tenancy qualifications been created since the passing of the Act, in Peebles-shire?—In Peebles-shire the farms are generally large, and there are not many instances of joint tenancy in the whole county; at present there are only 34 joint tenants enrolled; of these there were enrolled by the Whigs first, in 1835, 12, and secondly, in 1836, 16, making together 28, of which number 12 are qualified on the estates of Sir Thomas Carmichael and his son; the remaining six were enrolled by the Conservatives, four in 1835, and two in 1836; in general

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the joint tenants are either a father and a son or two brothers; there is only one case which has occurred in Peebles-shire, where I would say this description of qualification has been pushed to an unnatural extent; it is the case of Walter Watson, a tenant of Sir Thomas Carmichael's; Walter Watson succeeded his father, being the eldest son, in the farm of Muirburn, rented at little more than 200 *l.* a year; and was inrolled as tenant of these lands in 1835; in 1836 he gave in a claim for enrollment, as one of four joint tenants, having in the interim entered into an arrangement with Sir Thomas Carmichael for assuming his three brothers into the lease.

9478. Did the eldest son succeed to his father's lease?—Yes.

9479. As his father's heir?—As his father's heir; and he was enrolled accordingly, in 1835, as sole tenant.

9480. Is it probable that he would have assumed, on so small a subject, three brothers joint tenants, if it had not been for political purposes?—I should think not.

9481. Do you consider the statute furnishes any facilities with regard to the creation of votes of this description?—I have not had sufficient experience to give an opinion on that point; as already stated, we have not had many joint-tenancy cases in Peebles-shire; besides they have been generally a father and son, or two brothers, and I do not see any objections to qualifications of this description.

9482. If a proprietor wished to increase a number of votes on his estate, would it not be as easy for him to do so by dividing his farms, and thereby increasing the number?—Certainly, he could very easily increase his political influence by making his farms smaller.

9483. Do you see any difference between two tenants voting conjointly upon a farm worth 100 *l.* a year, and two tenants voting on two farms worth 50 *l.* each?—No, I see no difference.

9484. *Chairman.*] Is it not found inconvenient in sheep countries to divide them?—It would be inconvenient.

9485. *Mr. Dunlop.*] Does not dividing them, from obliging you to build additional steddings, increase the expense of the estate enormously?—Yes.

9486. *Lord Stormont.*] Do you consider it was the intention of the legislature to give qualifications to life-renters by constitution?—I should think so. By the old election law of Scotland, life-rents were all created by constitution; and it appears to me, if it had been the intention of the legislature to do away with that mode of constituting life-rents under the new system, that the legislature would have done so expressly.

6487. Had the same description of life-rents been created in Scotland previous to the passing of the Reform Act?—Previous to the passing of the Reform Act life-rent conveyances for the purpose of qualifying a party as a voter in a county were conveyances of superiority; now they are conveyances of property, the old superiority qualifications having been abolished. I think I answered on a former day that I had not myself seen any similar life-rent conveyances of property previous to the passing of the Reform Bill, although I understood such conveyances were known in practice.

9488. Are you aware that in England a person has the power of voting on a rent-charge?—Yes.

9489. Do you know what the difference is between a life-rent in Scotland and a rent-charge?—The difference, I understand, to consist in this; in Scotland a life-renter is, in fact, the proprietor of the property during his life-time, and as such, enters into full possession, and draws the rents. In England, on the other hand, a party who has only a rent-charge out of land is not entitled to exercise any such acts of ownership; he has merely a claim for the amount of his rent-charge from the proprietor of the lands.

9490. Is a life-renter in Scotland a more *bond fide* proprietor than a person possessing a rent-charge in England?—He certainly has a more complete right; he can take infeoffment in the lands, and thus render his right indefeasible during his life-time.

9491. Are you aware that there are life-owners possessing qualifications in England?—Yes.

9492. Might it not therefore have been the intention of the Legislature to create qualifications somewhat analogous to those which existed in England?—I should think such was the intention of the legislature.

1493. *Mr.*

9493. Mr. *Dunlop*.] Is it not necessarily a part of a rent-charge in England that the person becomes entitled to a certain sum of money out of the lands on which that rent-charge is laid?—I understand he has a right to a certain sum of money, but it is merely a right he can enforce from the proprietor of the property.

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9494. But is it not very possible, by the law of Scotland, as it at present stands, that a man may have a life-rent over a property to an amount sufficient to give him a vote without being able to draw one sixpence from that property; it may be so heavily burthened from prior claims that he cannot draw a farthing from that property?—Certainly; property may be so burthened, and if the heritable creditor enters into possession in virtue of an infeoffment of prior date to that of the life-renters, the life-renter would not draw his life-rent.

9495. Then it would be very possible for a man to grant a heritable bond on a subject in Scotland to the full amount of it, and then sell that subject for a nominal value to a life-renter, which life-renter, by the law of Scotland, would be qualified to vote?—Certainly, that might be done.

9496. Then, in that case, you see a very marked difference, do you not, between life-rent, as it may be constituted in Scotland, and a rent-charge in England?—It is always in the power of a life-renter in Scotland to ascertain what burthens are on the property.

9497. Do you not see a power of making a very different qualification, a qualification which in the one case may be fictitious, whereas in the other it must be *bond fide*, a person holding a rent-charge in England being really entitled to receive the money on which he claims to be qualified?—As heritable debts do not require to be deducted in Scotland, it is possible to grant a fictitious qualification by way of life-rent; but this could be checked, and a life-rent in Scotland made necessarily as real and *bond fide* as a rent-charge in England, by deduction and burthens in estimating value.

9498. Lord *Stormont*.] As heritable burthens are not deducted from any qualification in Scotland, might not the property that is held in fee be as fictitious a qualification as one that is held in life-rent?—I think there are equal facilities for creating fictitious votes in fee as in life-rent, perhaps more so; a proprietor in fee can give a better security to the party who has advanced him the money to enable him to purchase the property than a life-renter can; a fiar can give a security, in virtue of which the landlord can take infeoffment; but a life-renter can grant no such security, he can at most only give an assignation to the rents.

9499. *Chairman*.] Could not a life-renter give security for which infeoffment might be taken for the period of his life?—No, he cannot.

9500. Is there not this difference between the grant of a life-rent and the grant of a fee, that the fee passes to the heirs of the person, whereas a person creating life-rent votes knows all the persons who can possibly exercise them, and appoints them?—There is certainly that distinction.

9501. Therefore a person creating fees may create votes that may pass to other persons who may entertain different opinions, whereas if he gives life-rents, and is well acquainted with the individuals, he ascertains how they will be exercised?—On the supposition that the votes are fictitious votes, where the party who has conveyed the property has received a bond for the full value, I consider there is little chance of that property going to the heirs of the party who has acquired it under such circumstances; and the original seller has thus a complete hold, not only over the property in virtue of his bond, but has a hold over the vote of the nominal proprietor; for the moment he does not vote according to the way the seller wishes, he, the seller, has nothing to do but to enter into possession of the property, in virtue of his heritable bond, and thereby at once disfranchise the voter.

9502. But if the price is paid up by any other person, then the vote is free?—Yes, certainly; but it is not likely this will be done, except by another political party, and for a political purpose.

9503. Whereas in the case of life-rents, though the money be acquired in any other way, no person but the life-renter can exercise the vote?—Certainly not.

9504. Mr. *Dunlop*.] Might not a person having land already heavily burthened be willing to grant a life-rent over that land, who would not be willing to alienate it?—I dare say there are individuals who would rather grant a life-rent than convey part of their property in fee.

9505. *Chairman*.] Do you not suppose that that is a general feeling among landed proprietors, rather to grant rights that were to last the life of the individuals

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whom they knew, than rights which might be adjudged or carried off, or descend to the heirs of persons whom they did not know?—It would depend very much on the nature and situation of the properties intended to be conveyed.

9506. Mr. Dunlop.] Does not that privilege of granting life-rents open the door, almost to an unlimited extent, to making fictitious votes?—I do not think so. All the life-rents I have had any thing do with have been real *bonâ fide* transactions.

9507. Do you see any advantage in a *bonâ fide* life-rent over a fictitious one?—I think there is a manifest distinction.

9508. Would not the one be as easily supported in the Sheriff's Court as the other?—It is in the power of the sheriff to make the most minute investigations, and those investigations are generally made. You must prove delivery of the conveyance, actual possession of the property and receipt of the rents.

9509. Chairman.] Suppose you consider both classes of votes as *bonâ fide*, has not a person wishing to create political influence, greater means of doing it with facility by life-rents than by grants in fee?—He may create the votes just as easily in fee as on life-rent, because in the former it is always in his power to secure himself by an heritable bond and infeoffment; and the only way, in my opinion, by which you can check the creation of fictitious votes, either in fee or life-rent, is to make it imperative on the claimant to be infeoffed; and also that all heritable burdens shall be deducted. If you do that, you will check the creation of fictitious votes, both in fee and in life-rent. I think they can be created with equal facility either way, and I see no other way of checking the evil but by the mode I have stated.

9510. Supposing the heritable burdens deducted in both cases, has not a person a much greater facility of creating votes on his estate by granting them for life-rents for smaller payments than by selling in fee a full price?—It depends entirely on the party; some persons may prefer selling small properties in fee, others in life-rent.

9511. Do you not believe that throughout Scotland proprietors would greatly prefer creating votes by life-rent, to creating them by fee?—I think they would generally prefer creating them by life-rent over their own estates; but on the other hand they could buy property for the purpose of creating votes on fee.

9512. Then do you not believe that if life-rents were prohibited, there would be many fewer votes created?—That is a question I cannot answer; under such an altered state of circumstances it is impossible to say what would be the result.

9513. Mr. Dunlop.] Would the deduction of burthens be any protection at all against the creation of votes by property for which payment was to be made by a bill, as you were speaking of in a former part of your evidence?—I think so.

9514. Would a bill fall to be deducted from the value of the property?—No, certainly not.

9515. Then will you explain your former answer?—At present when a party conveys a property, for instance in fee, and takes a bill for the price, I understand, in general practice, the title deeds are allowed to remain in the hands of his agent and in this way the property can neither be sold nor burthened without his knowledge, and in general, he considers that as a sufficient security; but the moment you make it imperative on the claimant to be infeoffed, that security is destroyed, and in that way I do not think property would be conveyed unless the price was actually paid.

9516. Would that apply to life-rents as well as to property in fee?—To both, I think.

9517. But that would not apply to individuals whose credit was perfectly good, independent of the subject which they had purchased?—Not so much so, certainly.

9518. Then that deduction of burthens would come mainly to affect those who had little other property than that on which they were voting?—Perhaps it might, but I think the great object is, to prevent any party from having a vote unless he has the real and substantial *bonâ fide* 10*l.* interest in it, whether he is a rich or a poor man; and I think you can only do so by deducting heritable burthens.

9519. Supposing heritable burthens are deducted, do you see no objection to the creation of 100 or any greater number of life-rent votes for which bills are granted, and which bills, though payable, are not paid?—I think that the moment you make infeoffment imperative, and find that burthens must be deducted, you will put an end to the granting of bills; at least, in my opinion, it would be a very considerable check.

9520. Would

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9520. Would it have been so in any of the 70 cases you have mentioned, in which bills were granted?—I cannot answer that question. It is difficult for one man to say what another would have done under circumstances not contemplated at the time of the transaction.

9521. With which you were acquainted?—I did not take any bills myself; I was not the grantor of any of these life-rents.

9522. You said, of the cases you knew there were 70 in which bills were granted and which had not been paid?—Yes.

9523. Do you conceive, then, that the deduction of heritable debts would have prevented the making of any of these life-rent votes, or that the taking of infeoffment would have done so?—The parties who granted those bills were all certainly gentlemen of undoubted credit and character, and very likely the grantors of the life-rent rights might have been quite satisfied to have taken their bill.

9524. You have stated that you consider bills in some respect equivalent to payment?—Yes.

9525. Are not bills very frequently granted in Scotland without payment ever being made or demanded?—Not that I am aware of.

9526. Are not bills frequently granted between parties where there is no real transaction?—I have never been a party to any such bills.

9527. What are termed wind-bills?—Among merchants, I believe, bills are occasionally discounted with bankers where there are no real transactions; but I understand bankers set their faces very much against such bills.

9528. Is it not well known there are such transactions to an immense extent every year in Scotland?—In mercantile business, I suppose there is.

9529. Are you acquainted with the way in which votes were created under the former system?—I cannot say that I had much acquaintance with the creation of votes formerly.

9530. Lord *Stormont*.] Do you not know any instance in which payment has been demanded of a bill which was granted for a life-rent?—Yes.

9531. What instance was that?—The case of Mr. Bonner, of Rotho, who granted a bill to Mr. Forbes for a life-rent conveyance in Peebles-shire; Mr. Bonner died on the 26th November 1835, and in the beginning of January last, in the ordinary course of business, I lodged a claim against Bonner's estate for the amount of the bill.

9532. You recovered the amount of it, did you?—By the law of Scotland, an executor is entitled to six months before paying the debts of a deceased; this period has not yet expired, but the legality of the claim is admitted by Bonner's executors, and they have drawn rents from the property since his death, rents which were legally due to Mr. Bonner in his life-time, although not payable till after his death; and I have no doubt the money will be paid in the course of a few months.

9533. *Chairman*.] Do you know any cases of persons enrolled upon a 10*l.* interest on a 57 years' lease or a life-rent?—We have in Peebles-shire five enrolments on 57 years' leases.

9534. On the 10*l.* interest?—Yes.

9535. Have any of those been granted since the Reform Bill?—None.

9536. Is there any part of your evidence you wish to correct?—Yes; I was asked, at question 9030, if there were any joint tenants enrolled in 1834, and I answered, none, so far as appeared from the register; but that I had no charge of the registrations at that time, and could not therefore be accurate. I have since examined the register of that year, and compared it with the previous register of 1832, and I find that while Robert Steel, jun., is enrolled in 1834 as tenant of Kilbucho Mains; his father, was enrolled in 1832, also, as tenant of those lands. Both have since been enrolled as joint tenants; I therefore presume Robert Steel, jun.'s qualification in 1834 must have been a joint-tenancy qualification, although this does not appear from the register.

Martis, 23^o die Maii, 1837.

MEMBERS PRESENT.

Mr. Divett.
Mr. Walter Campbell.
The Lord Advocate.
Sir William Rae.
Mr. Fox Maule.

Mr. George Ferguson.
Mr. Dunlop.
Sir Hugh Campbell.
Mr. Edward Bucker.
Lord Viscount Stormont.

THE LORD ADVOCATE IN THE CHAIR.

James Robertson, Esq. called in ; and further Examined.

*James Robertson,
Esq.*

23 May 1837.

9537. *Chairman.*] YOU have stated in 9499 that a life-renter could not give security for which infeoffment might be taken for the period of his life ; might not a life-renter grant a bond on which his life-rent might be adjudged and infeoffment taken ?—Yes, I think he might borrow a sum of money, and grant a bond by which his life-rent might be adjudged.

9538. And infeoffment taken on the adjudication ?—Yes.

9539. Might not his life-rent be adjudged for any debt which he contracted ?—It might, certainly.

9540. Then security might be obtained over a life-rent right for any debt by means of adjudication ?—Yes, I think there are means by which a creditor could obtain a temporary security over the rents during the life-time of the grantor.

9541. Then how do you explain your answer, that a life-renter could not give security by which infeoffment might be taken during the period of his life ?—I meant by my answer on a former day that he could not convey his life-rent right, so as to enable the disponee to take infeoffment upon it. He may grant a security, or his right may be adjudged ; but I am still of opinion that he cannot convey his life-rent right, so as to enable the disponee to take infeoffment.

9542. The question was put generally whether he might give security, and if he was to do so by giving a bond on which adjudication might be raised, would not that be giving security ?—Certainly ; but it is a security to the extent of the rents only during the life-time of the grantor, and must fall with his death, and therefore not such a security as a proprietor in fee can grant.

Mr. George Rutherford, called in ; and Examined.

Mr. G. Rutherford.

9543. *Chairman.*] YOU are a solicitor in Edinburgh ?—Yes.

9544. How long have you been employed in the legal profession ?—Since August 1823 ; at first with a partner, and afterwards alone.

9545. Had you gone through a previous legal education ?—Yes.

9546. When did you commence that ?—In 1813.

9547. Have you been employed in the Registration Courts ?—Yes.

9548. Since what period ?—I was employed for a district in the county of Edinburgh at the first registration after the passing of the Reform Bill.

9549. Have you acted as political agent for Mr. Carmichael in the county of Peebles ?—Yes.

9550. From what period ?—From June 1835.

9551. Did you inquire into the state of the constituency in 1835 ?—I procured a copy of the register from the sheriff clerk of the county, which I investigated, and from it I ascertained the state of the constituency at that time.

9552. Have you been engaged along with Mr. Robertson in making up a table of the constituency for the county of Peebles ?—Yes, by desire of the Chairman.

[*The Witness was desired to look at the Table, produced in page 142 of the Minutes of Evidence, and referred to in answer to Question 9393.*]

9553. Have you any observations to make with respect to that table, as far as regards the inrolments in 1832 ?—The total number inrolled in that year, according to the table furnished by Mr. Robertson in 1832, is 300 ; I make that number 301.

9554. From what does that difference arise ?—In the copy of the roll furnished to Mr. Robertson by the sheriff clerk, and from which he made up his total, the name

name of a dissenting clergyman, the Rev. John Craig, minister of the Relief Church, Newlands, is omitted, and it was included in the copy of the register given to me. I know that Mr. Craig was inrolled that year, because I re-inrolled him in a subsequent year, in consequence of his not having been properly inrolled, as I thought, in 1832. Then, in the column of "Life renters by office, &c.," in that year, Mr. Robertson makes the number seven; I make the number eight, because Mr. Craig was inrolled in virtue of his office. In the column "Tenants' 50% qualification," Mr. Robertson makes the number 157; I make it 151. In the column "Joint tenants" Mr. Robertson enters none; I make the number six. I should explain that in the register there are no tenants inrolled in that year as *joint*; but the six that I have mentioned, though not inrolled as such, were actually joint tenants.

9555. Will you give the names of the six joint tenants?—Andrew Oliver and Richard Oliver, brothers, joint tenants of Williams-lee; landlord, Sir James Suttie.

9556. When had the lease been granted?—Before the passing of the Reform Bill.

9557. In the ordinary management of the estate?—Yes, they both lived upon and managed the farm; the next two are William Gibson and John Gibson, brothers, tenants of Kilbucho Place; the landlord, I think, Mr. Dickon of Hartree.

9558. Is Mr. Dickon in the conservative interest?—Yes. The next two are Thomas Thomson and Thomas Thomson, junior, father and son, tenants, of Stoney Path; I think the landlord was Sir Alexander Keith or Miss Keith; I am not sure whether Sir Alexander was dead at that time or not.

9559. Were those all leases granted before the Reform Bill?—Yes.

9560. Were these *bond fide* transactions?—I presume they were; the tenants were all relations, and all living upon and managing the farms.

9561. Was it a common thing before the Reform Act to have two near relations joined in a farm?—I cannot answer that question as regards Peebles-shire, for I was not so well acquainted with the county then as I am now; those that I have mentioned appear to have been the only ones prior to the passing of the Reform Act that were enrolled. In the resident and non-resident table a corresponding difference occurs between Mr. Robertson's statement and mine; thus, the total of residents I make 248, and Mr. Robertson makes it 247; in the column "resident life-renters" Mr. Robertson makes the number seven, and I make it eight; in the "tenants' 50% qualifications resident," Mr. Robertson makes it 150; I make it 144. In the joint tenants resident, Mr. Robertson makes "resident" none, and I make "resident" six.

9562. There was no contest for Peebles in 1832?—No, there was not.

9563. Have you been informed whether any means had been used at that time to get as many persons to lodge claims as could be brought forward?—I have been informed by several of the voters in the county that considerable exertions were made by Sir John Hay to induce people who were "qualified to come forward" and inrol.

9564. For what reason was that, as there was no contest?—There was a rumour that an attempt was to be made to join the counties of Peebles and Selkirk, and that they should only have one member; and it was with a view, as I understood, to show as numerous a constituency as possible in the county of Peebles, that application was made to qualified individuals to inrol themselves that year.

9565. Do you consider the inrolments that were then made as amounting to what might be considered the natural constituency of the county?—I consider that all who were inrolled that year were the natural constituency of the county; but I do not think that all the natural constituency of the county were inrolled that year, for I believe numbers did not inrol that were qualified to do so.

9566. Have you any observations to make with regard to the 40 who are stated in the table referred to, to have been added in 1833?—That number is quite correct.

9567. Do any observations occur to you with regard to the inrolments made that year?—Yes; in the column "Owners" Mr. Robertson enters 20, and in the column "Joint owners" none; I make the numbers 19 owners and one joint owner; the register does not show any joint owners; but my reason for saying that there was one enrolled that year is, that I find in the year 1832 Mr.

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Richard Mackenzie enrolled as proprietor of land Ingraston; and in the year 1833 I find John Ord Mackenzie, his son, also enrolled as proprietor of that property. In the column "Life-renters by office, marriage or succession," Mr. Robertson enters three, and in the column "Life-renters by constitution" he enters two; I make the numbers in the first four, and in the second one; and my reason for doing so is, that Robert Brown of Peebles is included by Mr. Robertson in the two life-renters by constitution stated by him, whereas I would transfer him to the column "Life-renters by office, marriage or succession," because he held his qualification under a *mortis causâ* deed granted by his brother to him in life-rent, and to his children in fee; then in the resident and non-resident table, in the column "Owners non-resident," Mr. Robertson makes the number three, and in the column "Joint owners non-resident," Mr. Robertson enters none; I make the numbers of the first three, and of the second one; the difference arises from the case of John Ord Mackenzie, before alluded to. In the column "Life-renters by office, &c.," Mr. Robertson enters three resident, and in the column "Life-renters by constitution," one resident; I make the numbers in the first four, and in the last none, which arises from the case of Robert Brown, already mentioned.

9568. Have you any observations to make with reference to the table as to 1834?—Only one; in the column "Tenants' 50l. qualifications," Mr. Robertson enters the number five; in the column "Joint tenants" none; I make the numbers of the first four, and the second one. This arises from Robert Steell, junior, having been inrolled in 1834 as tenant, whereas he was in fact a joint tenant; and this leads to a corresponding alteration in the resident and non-resident table, where Mr. Robertson makes the number of tenants' 50l. qualifications resident five, and joint tenants none; whereas I make the numbers in the first four, and in the second one.

9569. In that year there are two life-renters by constitution, one resident and one non-resident?—Yes.

9570. Who was the non-resident life-renter?—Mr. David Milne, advocate.

9571. Are you acquainted with the circumstances of that case?—Yes.

9572. How did you come to know them?—In 1836 I lodged an objection to Mr. Milne's continuing upon the roll, upon the ground that he was not the life-rent owner of the property for which he was inrolled, and witnesses were examined in the Registration Court, and afterwards in the Appeal Court Mr. Milne was examined on a reference to oath, and it is from the examination of the witnesses and Mr. Milne that I have a knowledge of the circumstances.

9573. Have you a note of that examination?—No, I have not with me; I can state the circumstances.

9574. Do so, if you please?—Mr. Milne stated that, in the year 1834, Mr. William Forbes, advocate, and he agreed to exchange life-rents in the county of Mid Lothian and Peebles; that, accordingly, a conveyance was made of a property to the value of about 10l., situate in Mid Lothian, to Mr. Forbes; and on the other hand Mr. Forbes procured him (Mr. Milne) a conveyance of a property of a similar value in the county of Peebles. Mr. Milne further stated, that he had drawn no rent for the first year, as he understood that that rent was applied in building dikes.

9575. Lord Viscount Stormont.] By the tenant?—Certain dikes were agreed to be built for the tenant, and the first year's rent was spent in that way.

9576. You mentioned that he said he understood it had been applied; did he not know how it had been applied?—He did not seem to know much about it.

9577. Did he state that he did not know?—I think he stated that he had been informed by his agent that that was the case; but he stated distinctly that he received no rent the first year.

9578. You state it was his agent who informed him how the rent had been expended?—Yes.

9579. The property, therefore, was in his hands, and not in the hands of Mr. Forbes?—I do not know that; that is a question of construction of the evidence.

9580. Was his agent the person that managed it?—The agent employed by Mr. Milne was Mr. Goldie, who was also the agent of Mr. Forbes.

9581. Did it appear that he did not exercise the rights of property upon that estate?—There was a submission or reference entered into in regard to some dispute

dispute as to the property upon which Mr. Milne was inrolled; and in the evidence in the Registration Court (I am not speaking of Mr. Milne's evidence) it appeared that Mr. Milne had for his interest acquiesced in that reference; this was, I think, in the year 1835.

9582. Did that not tend to prove then that it was his property, and not Mr. Forbes's?—That certainly was an element of proof to that effect.

9583. Then you are asked whether there was any evidence brought forward to prove that he did not exercise all the rights of property upon it?—I cannot say; my counsel in the Registration Court and in the Appeal Court argued that he had not exercised all the rights of property.

9584. Was any evidence brought forward?—There were two witnesses examined in the Registration Court.

9585. What evidence did they give?—One of them was a tenant, and the other was Mr. Goldie.

9586. What was the tenant's evidence?—Not having my notes by me just now, I cannot state precisely what the evidence given by the tenant was.

9587. Although you cannot state that evidence precisely, was it to the effect that Mr. Milne did not exercise the rights of property?—I cannot say.

9588. Can you state, then, whether or not there was any evidence to the effect that he did not exercise the rights of property?—I have already stated that my counsel argued that there was no exercise of rights of property.

9589. The Committee wish to know as a matter of fact, not a matter of opinion, whether there was or was not any evidence to the effect that Mr. Forbes did not exercise the rights of property with respect to that property?—I have already stated that two witnesses were examined upon the subject.

9590. *Chairman.*] And what was the import of their evidence, according to your recollection?—According to my recollection, the import of the evidence of the tenant was, that the first year's rent was applied in the building of some dikes, and the import of Mr. Goldie's evidence was, that Mr. Milne had entered into a submission in regard to that property, as I have already mentioned.

9591. Lord Viscount *Stormont.*] Did the evidence of either of these two witnesses, the evidence of the tenant or of Mr. Goldie, such as you have described, tend to prove that he was not the *bonâ fide* proprietor of that land?—Not that evidence alone.

9592. *Chairman.*] What other evidence was there?—It came out, both on the examination of Mr. Goldie, and in the examination on reference to oath of Mr. Milne, who was examined in the Appeal Court, that Mr. Milne had drawn the rent due in the year 1836, subsequent to the lodging of the objection against his continuance on the roll, that this rent was drawn by Mr. Goldie, as Mr. Milne's agent, by Mr. Milne's desire, and transmitted by Mr. Goldie to Mr. Milne.

9593. Lord Viscount *Stormont.*] Did that evidence of Mr. Goldie tend to prove, in your opinion, that Mr. Milne was not the proprietor of those lands?—It was an element in the evidence.

9594. Did it show that he had drawn the rent?—It showed that he drew the rent after the objection to his continuance on the roll had been lodged.

9595. Is that a proof that he was not the *bonâ fide* proprietor, because he drew the rent at one particular time of the year instead of another?—That alone would not be sufficient evidence, I conceive.

9596. What part of the tenant's evidence do you consider proved that he was not the proprietor of the land?—I did not say that the tenant's evidence proved that he was not the proprietor of the land.

9597. In part you said it did?—The tenant, so far as I remember, and I have not the notes here, never had any intercourse with Mr. Milne.

9598. You were asked what evidence there was tending to prove Mr. Milne was not the proprietor of the land; you mentioned that there were two witnesses; that one was the tenant who deposed that the first year's rent had been expended in building dikes; the second witness was Mr. Goldie, who deposed to the effect that he had drawn the rent after an objection was lodged against Mr. Milne's claim; you are now asked whether that was the only evidence brought forward to prove that Mr. Milne was not the proprietor of the land for which he claimed?—The only witnesses that were brought forward, and the only evidence adduced in the Court, was the evidence of the tenant and of Mr. Goldie; the sheriff repelled the objection, and held that Mr. Milne was properly inrolled, and then I appealed the case to the Appeal Court.

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9599. What took place in the Appeal Court?—Mr. Milne was examined on a reference to oath, and he stated what I have already mentioned, that Mr. Forbes and he had exchanged life-rents in the counties of Mid Lothian and Peebles, and that after the objections to his continuance on the roll were lodged, Mr. Milne wrote to his agent, Mr. Goldie, to draw the rent and transmit it to him, and that he did this for the purpose of obviating any objection which might be taken on the ground of his not having drawn any rent.

9600. Did he state that?—Yes.

9601. Did he state in Court that his reason for asking his agent to draw the rent was to do away with any objection that had been raised against his claim?—No; not that had been raised, but any objection that might be raised on account of his not having received the rent of that year.

9602. Would the fact of his not receiving the rent be a valid objection to his claim?—It was not held to be a good objection by the sheriffs.

9603. The truth is, he had received the rent; but supposing he had never received the rent, would that be a valid objection to a claim?—That is a question of law.

9604. Supposing he proved that he was entitled to receive the rent, but had not called for it, would that be a valid objection to a claim?—I do not think it would; I do not think that in every case it would, but it might form a ground, along with other circumstances, for rejecting the claim.

9605. *Chairman.*] Who was the other life-renter?—Mr. Alexander Gibson Carmichael.

9606. What was the nature of his life-rent?—His father conveyed to him in life-rent the farm of Skirling Mill.

9607. Was that part of the entailed estate?—It was part of the entailed estate of Skirling.

9608. Mr. Carmichael was the heir apparent in tail?—Yes.

9609. Do you understand that to be a legal transaction, a father conveying to the next heir of entail a part of the entailed estate?—Quite so; it is what we call propelling the entail.

9610. Is that an usual transaction in Scotch entailed estates?—I do not know; I have seen no instance of it myself, except the one referred to.

9611. Have you seen the deed of conveyance?—I have; I have got a copy of it.

9612. Did that transaction appear to you liable to any objection?—It did not; it appeared to me to be a very natural transaction, for the deed sets forth that Mr. Carmichael had attained the years of majority, and that his father had resolved to settle a separate yearly allowance upon him.

9613. Was that allowance a proper and suitable one, according to the extent of the estate, and the circumstances of the parties?—The allowance is not mentioned in the deed, and the deed says that in security of part of the provision Sir Thomas conveys to him the farm of Skirling Mill.

9614. Lord Viscount *Stormont.*] Is there any thing contained in that disposition to state what the other parts of the provision were?—No.

9615. *Chairman.*] What was the rent of the farm?—I understand it is 200*l.* a year.

9616. Do you know how the rest of the provision was made?—I believe by the conveyance of a farm in Mid Lothian.

9617. Which is part of the entailed estate?—Which is part of the Mid Lothian entailed estate.

9618. But are they both held under the same entail?—They are held under an entail, but I am not sure whether it is the same.

9619. Lord Viscount *Stormont.*] What distance is there between these two farms?—They are not connected; I should think about 22 miles.

9620. What is the amount of the whole provision, do you know?—I do not.

9621. *Chairman.*] Were there any joint tenants in that year, 1834?—Yes, one.

9622. On what estate was the joint tenant whom you stated to be inrolled that year?—On Kilbucho Mill.

9623. In whose property was that?—Lord Medwyn's.

9624. Lord Viscount *Stormont.*] Is that the only joint tenant that there was in 1834?—Yes.

9625. *Chairman.*] Have you any observations to make with regard to the persons inrolled in 1835, according to the table?—Yes; in the table "Resident and

and non-resident," Mr. Robertson makes the total of that year, resident 91, non-resident, 22; I make the first 88, the second 25; and in the column "Joint Owners resident" Mr. Robertson makes the number four, non-resident none. I make the first one, and the second three.

9626. From what do those differences arise between the table by Mr. Robertson and your statement?—The four Messrs. Gordon were that year inrolled as joint owners; and my information is, that the eldest son is resident in the mansion house of the property on which they were inrolled, and that the other three are resident and have a house in Edinburgh.

9627. Are they four brothers?—Four brothers.

9628. It was in that year you were employed as political agent in the county?—Yes.

9629. What was the whole constituency in 1835, prior to the registration?—Three hundred and fifty-four.

9630. How many of those were resident?—Two hundred and ninety.

9631. And non-resident?—Sixty-four.

9632. Was that as the numbers stood on the roll?—Yes.

9633. Is any deduction to be made for persons who were dead, or denuded of their qualification after the roll had been made up?—That number includes all who were inrolled, but at that time there were some dead; I think about seven, and a few denuded of their qualifications, though not struck off the roll.

9634. Were these all *bonâ fide* qualifications?—I should hold them to have been all *bonâ fide* qualifications, unless perhaps it may be said that Mr. K. Mackenzie's, Mr. Milne's and Mr. Carmichael's qualifications were not *bonâ fide*.

9635. Lord Viscount Stormont.] Why should they not be *bonâ fide*?—I do not say that they were not *bonâ fide*, but there had been a new species of right created which I had not seen before, and others had not seen before; some people might have thought them not *bonâ fide*.

9636. Was not the qualification of tenant a new sort of right, that you had not seen before?—No.

9637. You had never seen a qualification prior to the Reform Bill for a tenant; you say this is a new sort of qualification?—A new sort of right was my statement.

9638. A right as a right to vote?—No; I mean as a right of property.

9639. Was it a new right of property then created?—It was a new species of right.

9640. Was propelling an entail a new species of right?—Certainly not.

9641. You stated it was just now?—When I said so, I meant the life-rents that we now know since the passing of the Reform Bill, and therefore my observation should rather have been limited to the cases of Mr. Milne and Mr. Mackenzie.

9642. Did you never hear of an instance of a father giving to his heir apparent a life-rent on a property that was not entailed?—I never did, unless by a family settlement, or *mortis causâ* deed.

9643. Chairman.] When it is a settlement, is it not more usual to convey the fee, and reserve the life-rent?—I have never seen it done in any other way than the father conveying the fee during his life-time, reserving to himself the life-rent.

9644. Have you ever, in the course of your legal experience previous to the Reform Bill, known any instance of proprietors granting life-rents to any persons by constitution while they retained the fee?—No, I have not.

9645. Have you ever met with any conveyancer who had met with any instance of the sort?—No, I have not; and I have made inquiries of several who have had considerable experience.

9646. You think that if such transactions had been at all usual, you would either have met with them, or heard of them from other conveyancers?—I think I should.

9647. In the case of entailed proprietors, is there not a reason for propelling the entail in favour of the heir apparent?—If an entailed proprietor wishes to settle a provision upon his eldest son, there may be a reason for his propelling part of the entailed property to him in satisfaction of that provision.

9648. Is that less objectionable than granting him a bond on the entailed estate, or burthening the entailed estate?—I think it is.

9649. Does doing that avoid the operation of the prohibitions and irritances of the entail?—It certainly does.

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9650. You have stated the nature of the constituency in 1835, when you became political agent; did you take means to ascertain how they were disposed to vote at that time?—I did.

9651. What was the result of your inquiries then?—The result of my inquiries, from personally canvassing of the voters myself, and from the canvassing of the country agent, Mr. Fotheringham, and of Sir Thomas Carmichael and others, friends of Mr. Carmichael, was, that I had very little doubt that, if an election had taken place then, Mr. Carmichael would have carried the county.

9652. Lord Viscount Stormont.] How many promises had he out of the 353?—I have not my canvassing book here; it is in Scotland, and therefore I cannot answer the question.

9653. As you say he had very little doubt of carrying the county, he must have had half the promises of votes at least, must he not?—We had very nearly half.

9654. Promises?—Promises.

9655. And what reason had you to expect you were to have as many as would make a majority?—I did not expect a great many more, but, in my experience in canvassing, and in elections, I have invariably found that the whole constituency did not come up to the poll; and therefore, when I get promises from nearly half of the constituency, I think it is good ground for believing that there is a prospect of the candidate for whom I act carrying the election.

9656. Chairman.] As the constituency stood previous to 1835, did you conceive it any object for Mr. Carmichael, or those who supported him, to take any extraordinary means of making votes?—No.

9657. Do you know whether it was his intention, or the intention of his friends, to take any unusual means of creating votes at that time?—I believe it was not his intention, or the intention of any of his friends.

9658. Lord Viscount Stormont.] Have not two elections passed since the Reform Bill, when Sir John Hay was not opposed?—Yes.

9659. Was it not conceived in the county that it was hopeless to oppose him as the constituency stood?—I do not know.

9660. Was not the general opinion publicly expressed?—I am not aware of any such opinion being expressed.

9661. Do you know the reason why Sir John Hay was not opposed?—No, I do not.

9662. Did you ever hear any thing said upon that subject?—No.

9663. Was it not natural that he should be opposed, if the constituency was so equally divided in opinion as you state it to have been?—I cannot say; it depends very much upon whether there was a person willing to oppose him, and to come forward on the liberal interest.

9664. Chairman.] Had you occasion to be in the county of Peebles previous to 1835?—I was nearly a stranger to the county; I had some few acquaintances there, but very few.

9665. What was the result of the registration in 1835?—The total number inrolled was 113.

9666. There were seven life-renters inrolled in that year?—Yes.

9667. Do you know the circumstances of that case?—Yes, I do.

9668. Will you state them, if you please?—The individuals inrolled were the seven sons of Mr. Aitchison, of Drummorie, and each of them claimed as co-proprietor and joint owner in life-rent of part of the estate of Borlands, and in support of their claims the claimants produced a disposition by their father in their favour. The disposition bore date the 30th of January 1835, and it proceeded on a narrative of love, favour and affection, but without any price being paid for the subjects conveyed. I see by my notes that the deed did not contain a procuratory of resignation or a precept of seisin, so that the disponees could not be infeoffed upon that deed.

9669. Had the tenants got intimation of the transaction?—No.

9670. How did they pay their rents?—The property conveyed to the sons was in the natural possession of old Mr. Aitchison, with the exception of some cottages, and the tenants of those cottages got no intimation of the conveyance, but paid the rents that were due for them to the father, and not to the sons.

9671. Was Mr. Aitchison to be his sons' tenant, or how was that to be arranged?—Mr. Aitchison stated, on his being examined as a witness before the sheriff,

sheriff, that he was to be his sons' tenant, but that he could not tell whether a written lease had been entered into or not. Mr. G. Rutherford.

9672. Was there any evidence of payment of rent?—The only evidence of payment of rent was contained in the deposition of Mr. Francis Brodie, the agent for the family, who stated that he had debited the father in his own books with 5*l.* 10*s.*, as paid to each of the sons for half a year's rent, and credited each of the sons with that sum; in fact, that he had made a cross entry as against the father, and in favour of the sons.

9673. Lord Viscount *Stormont*.] Did Mr. Brodie take receipts from the claimants when these sums were so entered?—Yes, he took receipts.

9674. *Chairman*.] How did the sheriff dispose of the claim?—The sheriff rejected all the claims.

9675. How was the case disposed of in the Appeal Court?—The objections were repelled, and the claimants were admitted.

9676. Lord Viscount *Stormont*.] What was the nature of the sheriff's difficulty in allowing these claims?—The principal ground of his decision was this, that he did not think the possession was made out; he was doubtful whether the delivery of the deed to the disponees had been proved or not; but he did not think it was necessary to go into that question, as he was quite satisfied that possession had not been made out, he holding that possession was necessary.

9677. Had those deeds been delivered?—I do not think the evidence showed that they had been delivered prior to the 31st of January; my counsel pleaded that they had not been delivered.

9678. Did they bring any evidence to prove that they had been delivered?—Yes, they brought the evidence of Mr. Francis Brodie.

9679. What was his evidence?—That he had received instructions from old Mr. Aitchison to prepare the deed; that he had gone out to Drummorie for the purpose of getting it executed; that it was there signed by Mr. Aitchison; that he was a witness to the signature; that he brought the deed home with him, and that it remained for some time in his office, until it was handed over to Mr. Horne for the purpose of conducting the registration.

9680. This was the evidence that he gave before the registration sheriff?—That is the evidence that Mr. Brodie gave before the registration sheriff.

9681. You state that Mr. Aitchison himself was examined?—Yes.

9682. Did he not state on that examination that the property was wholly theirs?—I have a copy of the notes of his deposition; he says, "he considers his sons entitled to put him out of possession, and to do any thing they like with the property."

9683. Did he state that they might cut down the wood?—He stated that, from the date of the disposition, he considered his sons as having full right without any control on his part, and that they might, for example, cut down the wood if they pleased, the property being theirs.

9684. Did he state on his cross-examination that the value was to go against his sons' claims for patrimony?—He stated that when this disposition was executed, it was understood that the value was to go against his sons' claim for patrimony, whether it was entered in the books or not.

9685. These cases were appealed, were they not?—Yes.

9686. *Chairman*.] Did he state whether he could recal the conveyance or not?—He stated that he took away his name from a deed in favour of five strangers; that he does not mean to do so with the deed to his sons; that he supposes he might also do this, but he is no lawyer.

9687. Was that a part of his deposition?—That was a part of his deposition.

9688. Did you understand from that statement that he supposed he might take away his name from those deeds to his sons, if he chose?—Most undoubtedly.

9689. Sir *William Rae*.] Do you think that was a well-founded supposition?—I do not know; if the deeds were delivered to his sons, I do not think he could recal them.

9690. *Chairman*.] If they were in the hands of his agent whom he had employed to draw them, do you conceive that he might have desired his agent to give him back the deeds and cancel them?—I think he could, provided he had not handed those deeds to his agent, directing him to keep them as agent for his sons.

9691. Lord Viscount *Stormont*.] In point of fact had they not been delivered?—I do not think that the delivery was proved.

Mr. G. Rutherford.

9692. Was it not proved in the Appeal Court?—I do not think so.

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9693. *Chairman.*] Where a person returns a deed to the agent whom he has employed to draw it, is it still considered to be in his own custody, or as delivered to another person?—In his own custody, certainly.

9694. Lord Viscount *Stormont.*] Does not that depend on whether the agent to whom he returns it is agent also of the parties in whose favour he has drawn up the deed?—That would depend on circumstances; if a disponent and disponentee employ the same individual, and if the disponent hands over the deed to the agent, telling him that it is delivered to him as agent for the disponentee, and the agent holds it as the disponentee's agent, I think that would be a delivery.

9695. Sir *William Rae.*] Was not that the case in the present instance to which you allude?—I cannot hold it to be the case here, because Mr. Aitchison stated in his evidence that he thought he could recal these deeds.

9696. Lord Viscount *Stormont.*] Did he not state that, because he was no lawyer?—He said he was no lawyer.

9697. And therefore he did not understand that point of law?—I do not make that deduction from his statement.

9698. *Chairman.*] Is not old Mr. Aitchison considered a very shrewd man, and well acquainted with business?—So he is considered by the public, I believe.

9699. By his saying that he considered he might also have taken away his name from that deed, do you not understand that he considered it as being still in his custody, it having been delivered by him to the person whom he had employed as his agent?—That is certainly the deduction that I would draw from it, because, if it were a delivered deed, he could not recal it.

9700. Do you understand that Mr. Aitchison, by saying he was no lawyer, meant any more than that he formed his view according to the ordinary nature of the transaction; that the deed was still in his own power, being in the custody of his ordinary agent, without entering into any abstruse notions of law?—Yes, I so understood.

9701. Lord Viscount *Stormont.*] You stated that these cases were appealed?—Yes.

9702. What decision did the sheriffs come to upon the appeal?—The sheriffs, by a majority, admitted the claims, reversing the decision of the registering sheriff.

9703. Were any new facts elicited when the cases were brought before the Appeal Court?—I do not think there were any new facts.

9704. Was Mr. Brodie examined?—Yes, he was examined.

9705. Did he state any new facts?—I am not aware that any new facts were stated.

9706. Did Mr. Brodie state any thing with regard to the delivery of the deed?—According to my recollection, he just repeated the evidence that he had given in the Registration Court.

9707. Did he state that he had delivered the deed to Mr. Horne on the 30th January?—I do not think he did; I have already mentioned that he stated, in his examination before the Registration Court, that the deed was delivered to Mr. Horne, after having remained some time in his Mr. Brodie's office.

9708. Did he state that Mr. Horne had granted him a receipt for the deed upon that day?—I think he stated that Mr. Horne's clerk had granted the receipt for that deed, but upon what day I cannot say.

9709. Have you the notes of Mr. Brodie's evidence?—I find I took down the notes of the evidence given in the Appeal Court, in pencil upon the margin of the notes which I took in the Registration Court.

9710. In those notes is there any thing contained in his evidence with regard to the delivery of the deed?—I find marked upon the margin of my notes in pencil, "Delivered to Horne and Rose."

9711. Sir *William Rae.*] Nothing about the date?—Nothing about the date.

9712. Did the sheriffs, in deciding these cases, give their opinions separately?—They did.

9713. Have you notes of those opinions?—Yes; I have notes of the opinions delivered by Sheriff Miller, Sheriff Boswell and Sheriff Oliver, now Oliver Rutherford.

9714. Will

Mr. G. Rutherford.

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9714. Will you read them?—The purport of what Sheriff Miller says is this, that the character of tenant was not established in the person of old Mr. Aitchison, because neither the endurance of the lease by his sons to him, nor the rent, were fixed, and that the deed itself was a disposition granted *retentd possessione*, and therefore revokable by Mr. Aitchison, and Mr. Miller adhered to Sheriff Wood's judgment; Mr. Boswell stated that the deed was *ex facie* regular, and from the evidence a *bond fide* deed; that in regard, first, to delivery; in the case of a gratuitous deed, the legal presumption was, that it was delivered at the date of it; that gratuitous deeds had already been held by the Court to be delivered deeds, and he referred to the case of Mr. Scott of Sinton; that the circumstance of Mr. Brodie being agent for both parties, disponent and disponees, implied that the agent, on getting the deed, was acting for the disponees, and he held the delivery proved; secondly, as to possession; that the disponees need not draw rent immediately; that they are in possession, if they have a right to draw rent; that in regard to another deed by Mr. Aitchison in favour of strangers, it was not in Court; that he thought it was delivered also, but if the disponees gave it back, it was quite legal for Mr. Aitchison to take away his name from it. Mr. Oliver concurred with Mr. Boswell, thought the evidence of Mr. Brodie and Mr. Aitchison proved delivery, and that as the father was in possession before granting the deed as proprietor, and continued after granting it as tenant, possession was proved, the rent having been paid.

9715. *Chairman.*] Then there were two sheriffs at the Appeal Court for altering the judgment; Mr. Oliver and Mr. Boswell, and one for sustaining it; and Mr. Wood, who had pronounced it, had no vote?—Mr. Boswell and Mr. Oliver reversed the judgment of the registering sheriff, and Mr. Miller was for confirming it; but Mr. Boswell and Mr. Oliver being a majority, the claims were of course admitted.

9716. Mr. Wood had no vote?—He had no vote.

9717. Lord Viscount Stormont.] What agent was it that prepared the claims?—Mr. Brodie, I think it was, or his son and partner Mr. John Brodie.

9718. He was the private agent of the parties, not the political agent of Sir John Hay?—The private agent of the parties.

9719. *Chairman.*] Was Mr. Horne employed in that case?—Not in the Registration Court; the deed was sent to Mr. Horne, as Mr. Brodie says, for the purpose of Mr. Horne taking charge of the claims in the Registration Court, but afterwards it was returned by Mr. Horne to Mr. Brodie, Mr. Horne not having taken charge of the claims in the Registration Court.

9720. Lord Viscount Stormont.] Mr. Horne was never political agent for Peebles-shire?—Never.

9721. Mr. Robertson was not appointed for some months after this transaction took place, after the deeds were prepared?—I do not know when Mr. Robertson was appointed, but he could not have been appointed till some months after the 30th of January.

9722. Therefore Sir John Hay's political agent was not privy to the creation of these votes?—I am not aware that he was.

9723. *Chairman.*] Were there claims presented for other life-renters on Mr. Aitchison's property?—Yes.

9724. Was it upon the same farm, do you know?—It was on a different portion of the same property.

9725. Is Mr. Aitchison a large proprietor?—No, he is not.

9726. Who were they?—Major George Allan, on the Half-pay Establishment; Alexander Allan, advocate; William Milne, tenant, of Loch-hill; Alexander Patterson, merchant, of Leith; Thomas Anderson Shand, merchant, of Leith.

9727. Who was the agent who presented those claims?—According to my recollection, they were also signed by Mr. Brodie.

9728. What took place with regard to those claims?—They were all withdrawn.

9729. What led to their being withdrawn?—I should presume from Mr. Aitchison, senior, having recalled the disposition in favour of the claimants, upon which they founded their claims.

9730. Then it appears that Mr. Aitchison, after making conveyances to five life-renters, and claims being made on their behalf, cancelled the right he had granted?—It appears from Mr. Aitchison's deposition in the cases of his sons,

Mr. G. Rutherford. that he had granted a conveyance in favour of those five individuals, and that he subsequently recalled that deed ; but whether it was recalled prior to the claims being lodged, or subsequently, I have no opportunity of knowing, though I should presume it was recalled subsequently.

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9731. *Sir William Rae.*] Why ?—Because it is very unlikely that Mr. Brodie, Mr. Aitchison's agent, would have lodged claims for those five individuals, if Mr. Brodie had been aware that the dispositions had been recalled before the claims were lodged.

9732. *Lord Viscount Stormont.*] Did you ever see the dispositions ?—Which dispositions ?

9733. The deeds through which these five persons claimed ?—No, I never did ; I had no opportunity of doing so ; they were not produced at the Registration Court.

9734. Do you know whether they were gratuitous or not ?—I cannot say ; I never saw them.

9735. Do you know whether they had ever been delivered ?—I do not know.

9736. Then it is merely a presumption on your part, supposing that they were abandoned on account of Mr. Aitchison having cancelled the disposition ?—It is a very natural deduction to make from the evidence of old Mr. Aitchison.

9737. You do not know it as a fact ?—I do not know it as a fact ; I know the fact that the claims were withdrawn.

9738. But you do not know the reasons why they were withdrawn ?—No, I do not.

9739. There might be some reason for the whole transaction being cancelled, of which you are ignorant ?—Certainly there might.

9740. Then it was mere supposition on your part that that was the reason why they were withdrawn ; you cannot state it as a fact, that the reason they were withdrawn was because they had been cancelled ?—It is a mere deduction from the evidence of Mr. Aitchison ; they could not have been admitted in the Registration Court without the production of Mr. Aitchison's deed, which he had previously declared he had cancelled.

9741. You stated that Mr. Brodie, the private agent, was the agent employed to lodge these claims ?—Yes ; the claims both for the Aitchisons and those five individuals were either signed by old Mr. Brodie or by his son John, who was in partnership with him, to the best of my recollection.

9742. And Mr. Robertson, Sir John Hay's political agent, had nothing to do with the lodging or signing of any of these twelve claims ?—He did not sign them.

9743. Or lodge them ?—I do not know.

9744. Did you not state that Mr. Brodie lodged these claims ?—I stated that he signed them ; I did not call them lodged. If I said lodged, I meant he signed the claims, and I presume that he would lodge them, but I do not know ; Mr. Brodie took charge of the claims in the Registration Court, and then in the Appeal Court Mr. Robertson took charge of them ; they were rejected under the agency of Mr. Brodie, and admitted under the agency of Mr. Robertson in the Appeal Court.

9745. *Chairman.*] Did Mr. Aitchison in his deposition say that he had made votes in favour of strangers in the same way as in favour of his sons, and that he had since withdrawn them ?—Mr. Aitchison stated in his examination, as to his son's claims, that he had made dispositions in favour of strangers in the same way, from which he had since taken away his name.

9746. And did he also say that he did not know whether the conveyances to the strangers he had mentioned were intimated to them, but he took away his name from these deeds ?—Yes.

9747. Do you infer from that, that the persons to whom these conveyances were granted, were consulted by Mr. Aitchison when he withdrew his name from the deed ?—My inference was, that these gentlemen knew nothing about the matter.

9748. *Lord Viscount Stormont.*] Do you know that to be the fact ?—No ; it is merely an inference from the circumstances stated in evidence.

Mercurii, 24^o die Maii, 1837.

MEMBERS PRESENT.

Viscount Stormont.

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Mr. Dunlop.

THE LORD ADVOCATE IN THE CHAIR.

Mr. George Rutherford, again called in ; and further Examined.

9749. *Chairman.*] WHAT life-rent vote was first made in the county of Peebles?—The first was Mr. Kenneth Mackenzie, the son of Mr. Richard Mackenzie, in the year 1833. *Mr. G. Rutherford.*

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9750. What was the next?—The next two were Mr. Milne and Mr. Carmichael, in 1834.

9751. Those three were made before you had examined into the state of the county?—Yes, they were, before I was employed to take charge.

9752. According to what you heard when you canvassed the county, had those three life-rents excited any attention?—None at all, the county had not been canvassed previously, neither had there been any opposition at the Registration Court ; there were no objections lodged to any of the claims in the Registration Court in the years 1832, 1833 and 1834.

9753. Those life-rents had not been objected to?—They had not.

9754. You have stated that you attended the Registration Court at the time when the same life-renters were made by Mr. Aitchison?—Yes.

9755. There were also claims lodged for five others?—Yes.

9756. Did that excite much attention in the county?—A good deal ; there was a good deal of speaking about it, and considerable indignation was expressed by several of the voters who had previously been enrolled, and who were resident in the county.

9757. Of those ten life-renters by constitution you have mentioned, how many were supposed to be made on the liberal side, and how many on the conservative side?—Nine upon the conservative side, and one upon the liberal side.

9758. That one being Mr. Carmichael?—Yes.

9759. Were Mr. Mackenzie and Mr. Milne both considered as on the conservative side as well as the Mr. Aitchisons?—They were.

9760. From the canvass you made in 1835, do you conceive that there was any ground for holding that there was a majority at that time in favour of Sir John Hay against Mr. Carmichael?—No.

9761. Do you think it possible there would have been two-thirds of the voters at that time in favour of Sir John Hay if he had been a candidate?—I do not think so.

9762. Was it considered in the county at that time by Mr. Carmichael's friends as perfectly certain that Sir John Hay would be the opposition candidate?—No, it was not ; for Sir John Hay was reported at that time to be in very indifferent health.

9763. *Viscount Stormont.*] Of what time in 1835 do you speak?—Just about the time of the registration, the autumn of 1835.

9764. *Chairman.*] What do you believe would have been the result, according to the canvass you made, if an election had taken place before the registration of 1835 had come into effect?—I think that Mr. Carmichael, from the canvass I personally made, and from the reports of other canvassers, would have carried the county, at least that he had the best chance of carrying it.

9765. What do you conceive would have been the result even after Messrs. Aitchison's votes were inrolled, if an election had taken place before the inrolment in 1836?—I think that Mr. Carmichael's chances of success were increased

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Mr. G. Rutherford. by the registration of 1835, because there were more liberals inrolled in that year than there were conservatives, even including the seven Aitchisons.

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9766. Did the inrolment of the seven Aitchisons produce any effect upon the measures adopted by the liberal party?—Certainly it did.

9767. In what respect?—Sir Thomas Carmichael and Mr. Carmichael, and others their friends, and I, had frequent conversations upon the subject, and we entertained apprehensions that this was the commencement of a system in the county of Peebles similar to that which had been carried to so great an extent in the counties of Roxburgh and Selkirk; and that in the year 1836 we should very likely have a great number of strangers introduced into the county as voters upon qualifications such as the Aitchisons; I mean upon life-rent qualifications.

9768. Were any measures adopted by Mr. Carmichael or his friends in consequence of that?—Yes, after considerable deliberation; although they were very unwilling to adopt the same means of creating life-rents to introduce strangers, it was resolved that exertions should be made to have as many claims brought forward at the ensuing registration of 1836 as we could possibly manage; and it was resolved, as the principal part of Sir Thomas Carmichael's property, indeed the whole of it, in the county of Peebles, was entailed property, to purchase property; where we could get it, and to inrol our friends upon that property, that was the ultimate resolution we came to.

9769. Are you able to state to the Committee, whether that measure would have been resorted to, if Mr. Aitchison had not inrolled those life-renters, and claimed on their behalf?—I am enabled to state positively that no such measure would have been adopted, had it not been for the Aitchisons' cases.

9770. If the votes of the Aitchisons had been rejected by the Appeal Court, as they were by the sheriff, do you think that measure would have been resorted to?—I think it would have been still, for it was not from the sustaining of the votes of the Aitchisons, but because it was the commencement of the system which had been pursued in the counties of Roxburgh and Selkirk, and which had been carried to a very great height, that it was thought necessary to defend the local constituency, which we considered the real constituency of the county.

9771. Did the sustaining of the votes of Messrs. Aitchison in the Appeal Court add to that resolution?—I should say yes; the principal consultation which took place occurred subsequently to their claims being sustained by the Appeal Court.

9772. Was it some time after the votes of the Aitchisons had been sustained in the Appeal Court that any resolution of that kind was formed by Mr. Carmichael or his friends?—Not any definite resolution was immediately formed; and I may add, that I know Mr. Carmichael had a great aversion to the creation of such votes.

9773. What was the first measure taken on the part of Mr. Carmichael and his friends in consequence?—The first measure taken, to the best of my recollection, was the purchase of a park at Linton, called East Sands Park, which I bought from Mr. Samuel Graham.

9774. At what date?—I cannot state the precise day; I have made no memorandum; it was some where, I think, in the middle or latter end of October.

9775. What was done with regard to that property?—A conveyance was taken from Mr. Graham to Mr. Carmichael; then Mr. Carmichael conveyed the whole of it over in life-rent to six individuals.

9776. Viscount Stormont.] Was it Mr. Carmichael purchased it, or Sir Thomas Carmichael?—Mr. Carmichael purchased it, and the conveyance was taken to Mr. Carmichael.

9777. Chairman.] State the names of the individuals to whom it was conveyed?—The life-rent disponees were Mr. William Gibson Craig, Mr. James Thomson Gibson Craig, Mr. Carmichael's second cousins, Mr. George Dalziel, writer to the signet, David Cormack, solicitor in the Supreme Court, Maurice Lothian, solicitor, and John Lothian, solicitor in the Supreme Court.

9778. How was the price fixed and paid?—The price was calculated according to an annuity table of an insurance office, taking into account the amount of rent, and the respective ages of the life-renters.

9779. Was that according to what had been done in other cases?—So I understood; I believe it was the invariable practice.

9780. Who

9780. Who had first introduced that mode of doing it, so far as you know?—*Mr. G. Rutherford.*
The first instance I had the means of knowing was in Selkirkshire; that was from information from the political agent in that county.

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9781. Do you know who had done it there?—Mr. Pringle of Clifton, I think, and I understand that is the invariable practice on both sides; that is the only way in which we ascertain the value of those life-rents.

9782. How were they paid for?—The whole of the six life-rents were paid for; there were no bills granted; the Messrs. Lothian paid down the money at the time of the granting of the disposition, and Messrs. Gibson Craig, Mr. Dalziel and Mr. Cormack being all connected with and having an account in Gibson Craig, Wardlaw & Dalziel's books, the prices of their life-rents respectively were entered to the debit of their accounts as paid to Mr. Carmichael, and, on the other hand, Mr. Carmichael, in his account with Gibson Craig, Wardlaw & Dalziel, was credited with the amount in their books.

9783. Who keeps those books?—Mr. Cormack.

9784. Was enfeoffment taken?—Yes, upon the disposition in favour of Mr. Carmichael, and in favour of the life-rent disponees, enfeoffment was passed prior to the 30th of January 1836.

9785. *Viscount Stormont.*] When did Mr. Carmichael announce his intention of standing for the county of Peebles?—Mr. Carmichael's intention of standing for the county was announced by his father, Sir Thomas Carmichael, in the end of June 1835.

9786. Was there any idea entertained previous to the end of 1834, that the county of Peebles would be contested at the next election?—I do not know. I have already mentioned that my first political connexion with the county of Peebles was in June 1835; I doubt whether any intentions were entertained by any parties previous to that time.

9787. You stated that previous to your taking the charge of the political arrangements for Mr. Carmichael, 10 life-rents had been created by the two sides?—Three life-rent voters had been admitted prior to my taking charge of the business; and the disposition in favour of the seven Aitchisons must have been granted previous to my taking the charge, because they must have been in possession for six months prior to the 31st of July 1835; but I did not know of the deed till I saw it produced in court in the month of August 1835.

9788. Was Sir John Hay, or his political agent, in any way privy to the creation of those votes?—I do not know.

9789. Had Sir John Hay any political agent appointed at the time those votes were created?—I do not think he had at the date of the disposition in favour of the Aitchisons.

9790. Those votes were made by an individual unconnected with Sir John Hay?—I cannot say so, because I do not know the connexion between old Mr. Aitchison and Sir John Hay.

9791. Was it done by any political party of the county, or simply by an individual?—I cannot say; the deed in favour of the Messrs. Aitchisons was granted by an individual.

9792. You stated just now that you considered this as the beginning of a system of the creation of votes?—I did.

9793. Were there any other persons privy to the creation of those votes by Mr. Aitchison?—I cannot say; I had no access to know that.

9794. How could it be a system, when it was only a creation by one single individual?—I said that Mr. Carmichael and his friends apprehended that it was the commencement of a system.

9795. You stated also that it was a system whereby strangers were inrolled in the county to the destruction of the natural constituency; were the Aitchisons strangers to the county?—They were not resident in the county, with the exception, I apprehend, of one of them.

9796. Do you conceive that the sons of a gentleman who has an estate in the county are to be considered in the light of strangers to the county?—That depends very much upon the extent of the estate, and the proprietor having a mansion-house in the county; I should hold, that if I had a small estate in any county, which was not my native county, and I had a family of sons, and had no mansion-house in the county, then those sons would be, comparatively speaking, at all events, strangers to the county.

Mr. G. Rutherford.

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9797. *Chairman.*] Did one of Mr. Aitchison's sons reside in the county?—Mr. Francis, I believe, generally, or very frequently, resides upon the farm; that information I derived from Mr. James Robertson, the agent of Sir John Hay; I know nothing of it further than that Mr. Robertson told me he was generally resident there, and for that reason I acquiesced in stating in Mr. Robertson's tables, six of the Aitchisons as non-resident, and one of them as resident.

9798. Where does old Mr. Aitchison reside?—He resides in the neighbourhood of Musselburgh.

9799. Are Mr. Aitchison and his family understood to be persons who take an active part in political affairs in Scotland?—Certainly, they are; I was told that in the year 1835 Mr. Aitchison granted similar life-rents to his sons in the county of Mid Lothian; whether to all his sons I do not know.

9800. Had one of his sons formerly been candidate for the burghs including Peebles?—I am not aware of that fact.

9801. You stated that claims had been entered for persons on his estate which were afterwards withdrawn?—Yes.

9802. Did that enter into the consideration in forming an idea whether such a system was likely to be introduced into the country?—Most decidedly, for I held those individuals to be more strangers certainly than the Aitchisons.

9803. *Viscount Stormont.*] At what time did Mr. Carmichael come to the determination to purchase property for the purpose of making votes upon it?—I cannot state precisely the day of the month, but it was almost immediately after the Appeal Courts had finished.

9804. Had Mr. Carmichael come to this determination of himself, or was there any meeting of his friends held at which this determination was come to?—There was no special meeting called for considering the subject; the consultations that took place were at Castle Craig and in Edinburgh; the consultations consisted chiefly of conversations between Mr. Carmichael, Sir Thomas and myself, with other friends.

9805. What was the result of the consultation when they came to that determination?—I have already stated that the result was, that we proceeded to purchase property.

9806. How much property did they determine to purchase, how many votes did they determine to create?—They did not determine to purchase any certain quantity of property, neither did they determine to create any certain number of votes.

9807. What was the number of votes they considered it necessary to create?—I do not think that was ever brought under consideration.

9808. Was the subject never mooted whether it would be necessary to make one or one hundred?—No; so far as I can recollect, the only resolution was, to make as many as we could induce our friends to come forward and take.

9809. Did you conceive that would have no tendency to swamp the natural constituency for which Mr. Carmichael had such tender feelings?—We did not think it would have a tendency to swamp the natural constituency, because we saw that the conservative party had a great deal more in their power in the way of creating such votes, because they had a great deal more unentailed property than the liberal party had.

9810. Why would it not have the effect of swamping the natural constituency if you pursued the creation of votes by the whig party?—If the creation had been entirely on one side it would have given the liberal party a great preponderance certainly in the county; but I think that I have stated it was done in the anticipation of the conservative party making similar creations to a very great extent; and that that apprehension was well founded is, I think, supported by the fact that no less than 99 life-renters were inrolled by them the next year.

9811. Might not that be in consequence of the purchases which you made?—It might or might not; I cannot tell how that was.

9812. Had any life-renters been created by Sir John Hay, or at his suggestion previous to your purchase of East Sands Park?—There had been no life-rents created by Sir John Hay; I do not know whether any had been created at his suggestion.

9813. Were there any created at all except by Mr. Aitchisons?—Yes, there were two, one, as I have before mentioned, in 1833, and the other in 1834.

9814. Had you any other reasons for supposing it was the intention of Sir John Hay or his friends to create votes?—None but those I have mentioned.

9815. You

9815. You say that Mr. Carmichael purchased the property of East Sands Park, as far as you can recollect, about the middle or end of October?—Yes. Mr. G. Rutherford.

9816. That was for above 2,000 *l.*?—I think, as far as I can recollect, it was 2,200 *l.* 24 May 1837.

9817. Was that property paid for at the time?—Yes.

9818. Was that property burthened?—No, not at that time.

9819. Is it burthened now?—I do not think it is, but I am not the private agent of Mr. Carmichael; there was no burthen at the time I purchased it for Mr. Carmichael; I paid over the full consideration to Mr. Graham.

9820. There was no bond taken on the property?—None to my knowledge, and I do not think there has been.

9821. Sir James Gibson Craig is the private agent of Mr. Carmichael, is he not?—The house of Gibson Craigs, Wardlaw & Dalziel are.

9822. Those two life-renters, Messrs. Gibson Craigs, are the sons of Sir James Gibson Craig?—They are.

9823. Is Mr. Dalziel a partner of Sir James Gibson Craig's?—Both Mr. Dalziel and Mr. Cormack are.

9824. Were those persons strangers to the county all of them or not?—They were all strangers to the county, unless you call it a connexion with the county, the two Gibson Craigs being second cousins of Mr. Carmichael.

9825. *Chairman.*] Are they heirs of entail to Sir Thomas Carmichael's estate?—I do not know; it is rather my impression that Sir James Gibson Craig is heir of entail to Sir Thomas Carmichael, in default of the family of the latter.

9826. By that purchase six life rents were created?—Yes.

9827. That was not more than equivalent to the life-rents created by Mr. Aitchison?—It was not; there was one fewer.

9828. Do you know whether any other purchase was made in the county on which life-rents were created after East Sands Park was purchased by Mr. Carmichael?—The next purchase was Lyndale.

9829. By whom was that purchased?—I understood it was purchased by Sir John Hay.

9830. About what time was that purchase made?—About the latter end of November.

9831. How many votes were made upon it?—Seven.

9832. Who was the agent in purchasing it?—The agent for purchasing it was Mr. Thomas Innes; the reason for my stating that I understood it was purchased by Sir John Hay is, that a disposition was taken in favour of seven persons in life-rent, and to Sir John Hay in fee.

9833-4. Was that transaction conducted by Sir John Hay's political agent, Mr. Robertson?—I think Mr. Robertson was the framer of the deed.

9835. There were seven votes made upon that?—There were.

9836. Those seven persons were afterwards inrolled?—Yes.

9837. What was the next property that was purchased in the county on which votes were made?—The Kilbucho Mill.

9838. Who purchased that?—Mr. Carmichael purchased it.

9839. About what time?—About the end of December.

9840. How many votes were made upon that?—Twenty-one.

9841. Were they made in the same way as the votes on East Sands Park had been made?—Precisely the same.

9842. How did the life-renters pay for their life-rents?—Partly in money and partly in bills.

9843. *Viscount Stormont.*] Will you state the names of the persons inrolled on Kilbucho Mill?—Walter Adams, *M. D.*, Edinburgh; James Anderson, leather merchant, Edinburgh; John Clark Brodie, residing in Edinburgh; James Crawford, advocate, Edinburgh; James B. Crease, merchant, Edinburgh; Peter Crooks, writer to the signet, Edinburgh; John Black Gracie, writer to the signet, Edinburgh; Alexander Jameson, merchant, Edinburgh; James Bruce Jardine, *Esq.*, younger, of Hallside; Peter Lamond, brewer, Edinburgh; John Lees, tobacconist, Edinburgh; Augustus Maitland, writer to the signet, Edinburgh; Thomas Mansfield, accountant, Edinburgh; George Meikle, merchant, Edinburgh; Andrew Millar, merchant, Edinburgh; Adam Paterson, writer to the signet, Edinburgh; Ralph Richardson, tobacconist, Edinburgh; John R. Stodart, writer to the signet, Edinburgh; James Gibson Thomson, wine-merchant, Edinburgh; Robert Thomson, merchant, Edinburgh; William Wemyss, Salisbury-road, Edinburgh.

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9844. Were any of those persons connected with the county, or were they strangers?—They were all strangers, except Mr. James Bruce Jardine, Mr. Augustus Maitland and Mr. James Gibson Thomson, who are relations of Mr. Carmichael, can be considered to have any connexion with the county.

9845. Are they very near relations?—I think they are second cousins.

9846. Do any of them reside in the county?—They are all non-resident.

9847. It was Mr. Carmichael who purchased this property, and not Sir Thomas?—It was.

9848. Was there any heritable bond on this property?—No.

9849. Was infeoffment taken by those 21 persons?—Yes, before the 30th of January.

9850. How many paid by bill, and how many by money?—Twelve paid money down, and nine paid by bill.

9851. Did those 12 pay at the time of the grant?—Yes; the very moment of the signing the disposition, they paid over the cash to me.

9852. *Chairman.*] Were there any other considerable purchases made in that year?—There were no considerable ones, with the exception of a number of purchases made in fee.

9853. Were there any other purchases made of property on which life-rents were created?—There were no considerable purchases; there was a house and garden purchased.

9854. Were there any purchases made on which any considerable number of life-rents were made?—No.

9855. How many life-rents did Sir John Hay create on his own property, besides the property of Lynedale, to which you have referred?—Seventeen in the whole.

9856. How many did Mr. Mackenzie create on his property?—Twenty-four.

9857. How many did Mr. Allen create?—Eleven.

9858. How many did Mr. Forbes create?—Twenty.

9859. How many did Mr. Beresford create?—Five.

9860. Were those more than you had expected, or had you reason from the report in the county to expect that would take place?—I had reason to expect that would take place, but certainly not to so great an extent; I had heard reports of intimations of dispositions being made to tenants on several of the properties, and I therefore concluded that the life-rents created on the conservative side would be to a considerable extent, but not to the extent that they afterwards turned out.

9861. Did any thing pass between you and Mr. Forbes with regard to the votes that had been made upon his property?—Yes, between the lodging of the claims for the life-renters on Mr. Forbes's property and the Registration Court, a report prevailed that those life-renters had been constituted by Lord Medwin, Mr. Forbes's father, and a paragraph appeared in the newspaper, making some observations upon the circumstance. At the Registration Court at Peebles an allusion was made to the circumstance by one of my counsel; and Mr. Forbes felt considerably hurt at that allusion. Next morning, Mr. Forbes, who was leaving Peebles, stated to me that he had felt considerably hurt, as his father really did not know any thing relative to the creation of those life-rents, and he asked me when those life-rent cases came to be discussed before the court, to tell the counsel not to make any allusion to his father; for if there was any merit or demerit in the matter, it must attach to him, Mr. Forbes, entirely, as his father did not know any thing about it. I mentioned to him that I had been informed of it by Mr. John Anderson, his father's agent, who told me that the property had been conveyed by Lord Medwin to Mr. Forbes two or three years before; and I promised Mr. Forbes, that so far as I had any power, no allusion should be made to his father's name, and there we parted. When I returned to Edinburgh, I found a note lying from Mr. Forbes to me, explaining the misapprehension under which he was afraid I was labouring in regard to the time of conveyance of the property from Lord Medwin to him, that Mr. Anderson had been under a mistake in stating that the property had been actually conveyed some years before, for that the disposition by Lord Medwin to Mr. Forbes was dated in January 1836; but that the property had been actually handed over by Lord Medwin to him two or three years before, and that he, Mr. Forbes, upon that occasion had transferred the agency of the estate from Mr. Anderson to Mr. Alexander Goldie, a person who was the proprietor of a neighbouring property.

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property, and who was a man of skill in country matters; so that Mr. Goldie might advise him with regard to improvements upon it, and that since that Mr. Forbes had laid out money upon the property, and was really the proprietor, though he had not then had the deed from his father. To this note I returned an answer, saying that I was quite satisfied with the explanation which was given, and that if the property was actually transferred to him at the time he mentioned, of which I had no doubt, from his being a gentleman of honour, it made very little difference whether the deed was given then or not.

9862. You are still satisfied upon that subject?—Perfectly.

9863. Is the number of voters, 277, stated in the table as inrolled in 1836, correct?—It is.

9864. There are 134 of those said to be life-renters by constitution?—I make the number 135; Mr. James Turnbull, of Peebles, was enrolled, partly as proprietor in fee, and partly as owner of a life-rent; his property in fee was not sufficient to yield a qualification, and his father conveyed to him a property in life-rent to make up his qualification, and I have put him in as one of the life-renters, because it was in consequence of the life-rent qualification that he was enabled to make out his value; but he may be put into either column.

9865. How many of those 135 were made by conservative proprietors, and how many by proprietors in the liberal interest?—There were 100 by conservative proprietors taken charge of by Mr. Robertson, and there was one by the Earl of Wemyss, in favour of Lord Elcho, taken charge of by Lord Elcho's own agent.

9866. How many were there in the liberal interest?—Thirty-four.

9867. Were any persons who claimed to be inrolled on conveyances granted by Sir John Hay rejected?—Yes, there were 14.

9868. If all the persons to whom conveyances had been granted by Sir John Hay had been inrolled, how many votes would have been created by him besides those on the estate of Lynedale?—Thirty-one.

9869. Was there any question with regard to gentlemen of the name of Bruce who were inrolled on conveyances by Sir John Hay?—Yes, their claims were rejected by the Registration Court, and admitted by the Appeal Court.

9870. On what grounds were they rejected by the Registration Court?—The ground was want of value for the six months prior to the 31st day of July, and it arose thus: the property claimed upon consisted partly of some houses occupied by two tenants, and partly of a cottage, garden and stable, occupied by Mr. Robert Duncan Douglas, the procurator fiscal of the county; by my notes taken at the time I perceive Mr. Douglas stated, when examined as a witness, that the rent payable by him was 15*l.* a year, and that his entry into the premises was at Martinmas 1835; upon his cross-examination he admitted that the stable had not been built till June; at all events, that the building had not been commenced till about the end of April or the beginning of May; he stated that he considered that his rent covered every thing, including the stable, which was built upon a neighbouring area of ground; then another witness for the claimant was examined, William Lambert, to prove the receipt of rents; and upon his cross-examination he stated the value of the stable to be 3*l.* a year; the rents altogether amounted to 22*l.*; and my counsel, Mr. Shaw, contended successfully, that as the stable had been sworn by Mr. Douglas to be included in the subjects for which he paid 15*l.* rent, and it had not been built till the summer, the value of that stable should be deducted from the 22*l.*, leaving thereby 19*l.*, which was not sufficient to qualify the Messrs. Bruce, who ought to have proved that the value of the property was 20*l.* or upwards, and on that ground the sheriff rejected the claims.

9871. Was that judgment affirmed in the Court of Appeal?—It was not.

9872. Why?—Because the appeal sheriffs held that the value was proved.

9873. Was there any difference in the evidence given before the sheriffs and that before the Registration Court?—I see by the notes taken at the Appeal Court that Mr. Douglas, who was again examined, stated that nothing was said about the stable when the house was let to him by Sir John Hay; that the amount of rent was fixed before the stable was talked of; that he does not pay any rent for the stable; that it was mere matter of favour.

9874. Did that agree with his evidence before the Registration Court?—I do not think it did.

9875. In what respect did it differ?—Because in the Registration Court he swore, according to my notes, that his rent covered every thing, including the

Mr. G. Rutherford. stable on the other area of ground, and because, according to my notes taken in the Appeal Court, he swore that he did not pay any rent for the stable.

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9877. Have the goodness to state what is your reason?—Because, after a witness has been examined in the Registration Court, he very frequently remains in Court, or at all events has an opportunity of doing so to hear his evidence canvassed and applied to the particular claim under discussion; he sees where the evidence has been defective, what points of it make for or against the claim, and is thereby enabled to amend his evidence in the Appeal Court, in case it should be appealed, and he should be re-examined.

9878. Viscount Stormont.] Is there no power to send him out of court after his examination is closed?—None whatever.

9879. Chairman.] Is the taking evidence in both Courts attended with considerable expense to parties?—Very great expense; so much so, as to induce agents to compromise cases which have been appealed very frequently.

9880. Do you think it would be an improvement on the present mode of proceeding, that the evidence as taken down by the sheriff in his notes in the Registration Court should be considered as the rule in the Appeal Court?—I think there is great difficulty in that question, because if the evidence were taken down precisely as it is given in the Registration Court, the notes would be so very voluminous, that I do not think they would answer the purpose in the Appeal Court; I believe in the county of Berwick, that was tried, but found not to answer; but I think if the sheriff were to state in his notes, that such and such things were to his satisfaction proved; for example, the delivery of deeds, the intimation to tenants, the payment of rent, proved or not proved, as the case may be, and if the appeals were to proceed entirely on points of law which very frequently arise in the Registration Court, that might be a very great advantage, and at all events would be a saving of a great deal of expense.

9881. Viscount Stormont.] Was there any doubt entertained as to the honesty of the evidence of Douglas by the sheriffs?—There did not appear to be any doubt in the minds of the appeal sheriffs; but I remember I was very much struck by a remark of Mr. Wood, the sheriff of Peebles-shire, who did not sit as the appeal judge; in cases from his own county, he very seldom makes any remarks on the decisions which have been pronounced by his brethren, either sustaining or reversing his judgments in the Registration Court; he stated that if the evidence had been the same before him in the Registration Court as it was that day before the Appeal Court, he would have come to precisely the same conclusion as the appeal sheriffs had; I have a more distinct recollection of that, because it was a good deal talked about at the time.

9882. Chairman.] Were there any claimants on votes created by Sir Thomas Carmichael rejected?—Yes, there were two.

9883. Who were they?—Mr. Peter Wilson, manufacturer of Hawick, and Andrew Robb, carrier at Linton.

9884. On what ground was Mr. Wilson rejected?—They were both rejected on the ground of want of value.

9885. Viscount Stormont.] Was money paid by either of those?—In the case of Wilson, it was an exchange between Sir Thomas Carmichael and him; Sir Thomas got a conveyance in life-rent of property in Roxburghshire, and Mr. Wilson got a conveyance of property in Peebles-shire from Sir Thomas; the values of those life-rents were calculated, and, owing to the difference of age between Sir Thomas and Mr. Wilson, there was a sum of 26 l. paid by Mr. Wilson to Sir Thomas; in regard to Robb, he granted a bill for the price in the first place; but, owing to a very painful circumstance that had occurred previously, Sir Thomas Carmichael, in my presence and in the presence of Mr. Cormack, tore that bill to pieces, telling me at the time that he wished Robb to have the rents of the property without any debt hanging over him for the price.

9886. Chairman.] What were the circumstances which led Sir Thomas Carmichael to do that?—The circumstances were these: Sir Thomas Carmichael and Mr. Carmichael upon one occasion visited Linton, a village in the county, upon a canvassing visit, and the people, when they got to the outskirts of the village, took the horses from the carriage and drew it into the village; Robb's son,

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son, a very fine boy, unfortunately was pushed under the wheel, and crushed to death, and, of course, this occasioned very great distress to Sir Thomas Carmichael and Mr. Carmichael, who, whenever they were at Linton, visited the parents; the parents behaved extremely well, and attributed no blame to either Sir Thomas or Mr. Carmichael, considering it a mere accident; and Robb frequently expressed to Mr. Carmichael, how glad he should be to have a vote in the county for the purpose of supporting him, and showing he had no ill-will to him. In making the life-rent, Mr. Carmichael said to me, "Now Robb is very anxious to have a vote, make him one of the life-renters;" I communicated it to him, and Robb was delighted with it, and granted a bill for the price; then afterwards Sir Thomas Carmichael got the bill from me, and tore it through, meaning that Robb should have the life-rent on the property, and thinking it was the handsomest way in which he could express his sense of the suffering of the parents.

9887. Were those circumstances stated in the Registration Court?—They were stated in the Registration Court by Mr. Carmichael; he was in court at the time, and was asked to state the circumstances, which he did.

9888. Did the sheriff consider the circumstance of Sir Thomas having destroyed the bill, as forming any objection to the vote?—No; the objection turned entirely on the point of value, which arose out of a dispute with the tenant what the rent actually was.

9889. Must not any person who was in court at the time have been aware that Sir Thomas's destroying the bill had no connexion with the rejection of the vote?—Certainly, in the discussion in the Appeal Court, the sole question was, the point of value, not the destruction of the note; Mr. Graham Bell, counsel for Sir John Hay, said he was quite satisfied upon that, he saw it was distressing to Mr. Carmichael.

9890. That was a point entirely given up on Sir John Hay's part, as an objection to the vote?—It was never discussed, it was never made an objection to the vote.

9891. Viscount *Stormont*.] Were there no other life-rent votes rejected that year on the whig side?—Yes, there were two, Charles Williamson, merchant in Hawick, and George Veitch, merchant in Peebles.

9892. On what ground were they rejected?—They claimed on property conveyed to them by Mr. Thorburn, the present Provost of Peebles, and their claims were rejected, upon the ground that they had claimed on more property than Mr. Thorburn had conveyed to them.

9893. What property was it upon which they claimed?—The shop of Mr. Thorburn; he is a clothier and mercer.

9894. They claimed as life-renters upon the shop in which Thorburn carried on his business?—Yes, on premises occupied by Walter Thorburn & Co.; it was the shop in which he carried on his business.

9895. Did they pay for those life-rents?—In the case of Mr. Williamson, there was an exchange effected by Mr. Thorburn, Mr. Thorburn getting, in return for the life-rent in Peebles-shire, a life-rent in Roxburghshire; in regard to Veitch, it was paid for by bill.

9896. Was there any other claim on a life-rent rejected in that year?—No; but there was a claim which was withdrawn, George Elphinstone's; his father had conveyed to him in life-rent a part of his property in Peebles; between the date of the disposition and the time for lodging the claims old Mr. Elphinstone died, and George Elphinstone put in two claims, one as life-renter of a portion of the property, and the other as heir to his father; the life-rent claim was withdrawn without any discussion, and Mr. Elphinstone was inrolled on the claim as heir.

9897. *Chairman*.] You have referred to some life-rents created on Mr. Beresford's estates; are you acquainted with the circumstances of those?—I am; the number of life-rents created by Mr. Beresford was five; and the life-renters were William Ponsonby Barker, Esquire, of Kilcooley Abbey, in the county of Tipperary; the Rev. Charles Claudius Beresford, residing at Drumlane, in the county of Cavan; Robert Fowler, esquire, eldest son of the Bishop of Ossory, residing at Rathmalone, in the county of Meath; Barker Thacker, esquire, residing at Ballymelish, in Queen's County; and William Todd, gamekeeper, at Macbie-hill. Mr. Beresford conveyed the Corn-laws Park to those individuals by a disposition, dated the 21st of January 1836, with assignation of the rents

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9898. Had they granted any back lease?—No, and that the disposition was sent to Edinburgh, and delivered to a Mr. Gleig, a clerk in the Exchequer, Edinburgh, to be held by him as agent for the disponees; Mr. Gleig stated that he was an auditor of sheriffs' accounts principally, and that he was not a law agent; that he was asked by Mr. Stuart, who was the factor of Mr. Beresford, to take delivery of the deed; that he had no correspondence with the claimants or acquaintance with them, but that he had authority by letter from one of the claimants to receive the disposition; but upon being asked whether he knew the hand-writing of this individual, or could swear that the signature to the letter was the true signature, he said he could not tell.

9899. *Viscount Stormont.*] Who put that question to him?—My counsel.

9900. Did the counsel ask him whether he could swear to the hand-writing of a man whose writing he had seen only once?—Yes.

9901. Could the witness have given any other answer than that which he gave?—Certainly not; the object of that question was to show that the witness could not say it was an authority at all; the rents were assigned to the disponees from Martinmas 1835, but the property had not been let until the 1st of February 1836, and Mr. William Stuart, the factor for Mr. Beresford, according to my notes, stated that he had let the property from that date to a Mr. Tennant; that he held a general factory from Mr. Beresford, the disponent, and that it was under the powers contained in that factory that he had made the letting; he also stated that he had intimated the disposition to Mr. Tennant, who however had not entered into possession of the field at the date of the intimation; my counsel pleaded that intimation to a person who was not in possession as tenant was insufficient, and that as Mr. Stuart had let the field under the power contained in the factory by the disponent, possession had not been obtained by the disponees; but the sheriff stated that he could not find grounds for rejection, and sustained the claims.

9902. Can you furnish a list of the 14 claimants on Sir John Hay's property who were rejected?—I can; Hon. Captain William Keith, R.N.; Archibald Hepburn Mitchelson, of Middleton; Thomas Stavert, of Hoscott; Charles Nairne, writer to the signet; Hugh Hay Rose, Lieutenant-colonel in the Portuguese service; Archibald Smith, advocate; William Ogilvie, of Chesters; William Rutherford, writer, Galashiels; John Scotland, residing at Glen Douglas; Charles Balfour Scott, writer to the signet; Lieutenant-colonel Robert Oswald, C.B.; Alexander Bathgate, schoolmaster, Peebles; Robert Scott Moncrieff, advocate, Dalkeith; Major Norman Pringle, Edinburgh.

9903. Did any thing particular occur with regard to any of those different from other cases of rejected votes?—In the cases of Charles Nairne, writer to the signet, Lieutenant-colonel Hugh Hay, and Archibald Smith, advocate, there was this peculiarity, that the part of the property claimed upon was tenanted by old servants of Sir John Hay, who held their property rent-free. The value of that part was necessary to make up the 10*l.* a year to each claimant, and Sir John's agent, Mr. Robertson, wrote to Mr. Duncan Douglas, stating this, and saying, that Sir John would pay a fair rent for the property occupied by the tenants who sat rent-free. Mr. Douglas in place of taking this rent from Sir John Hay, paid monies, to the rent-free tenants, with which they paid imaginary rents, for they were nothing else; Mr. Douglas handed over in the first place sums of money to the rent-free tenants, and then the rent-free tenants returned those monies in the name of rent, so that it was just like paying with the right hand and receiving with the left.

9904. *Lord Stormont.*] Was Mr. Douglas authorized to do this?—I do not know.

9905. Was there any authority to that effect in that letter which was written by Mr. Robertson to Mr. Douglas?—I recollect hearing the letter read, and I do not think there was any authority to that effect.

9906. Have you got a copy of the letter?—No.

9907. Was it not brought forward as evidence before the sheriff?—It was.

9908. Have you any note of it?—Mr. Douglas stated, that he "received a letter upon the 10th of February from Mr. Robertson, saying, that Sir John Hay would pay fair rents for tenants to disponees, (such tenants then sitting rent-free), from

from Martinmas last;" Mr. Douglas added, "that he went over to Johnstone and Moffat, two of the rent-free tenants, a few days before Whitsuntide, and said they were to come over and pay their rents; the tenants understood it;" and the same was done in regard to James Mar. Then he says, that he gave them the money, and then they paid him. But in Mar's case, another witness, William Lambert, who was examined, stated, that the whole of them paid their rents to him in Mr. Douglas's office, and on receiving them he handed over receipts to them; but he gave those receipts, by Mr. Douglas's authority, for the proprietors.

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9909. You have no further note of the letter?—No, I have not; Mr. Douglas also stated, that he knew that Moffat and Johnstone were to sit rent-free from Martinmas; those claims were rejected, because the claimants did not prove that they were in the receipt of rents to the amount of 10*l.* each.

9910. *Chairman.*] Mr. Douglas was Sir John Hay's agent in the country?—Yes, his private agent at that time, and also the agent, I believe, of all the life-rent disponees in the conservative interest in the county. Mr. Douglas stated in court, that he held authority from a great majority of the conservative life-rent disponees to collect the rents, and to divide them amongst them.

9911. At the present time what is the number of persons entitled to vote in the county of Peebles?—Five hundred and sixty-eight.

9912. How many of those are resident, and how many are non-resident?—I make the number of resident 352, non-residents 216; this differs from the number in the table given in by Mr. Robertson, owing to what I stated in a previous part of my evidence, that he holds the four Messrs. Gordon as all resident, and I hold three of them to be non-resident.

9913. How many life-renters by constitution are there among those?—One hundred and forty-three.

9914. How many of those are non-resident?—One hundred and twenty-seven.

9915. Does this state of the constituency produce any feeling in the country, so far as you have had occasion to observe?—I think it does excite a considerable feeling of indignation.

9916. On what account?—Because many of the resident electors in the county think that their votes may be entirely swamped by such a number of strangers being introduced into it.

9917. According to any information you have received, is this system of creating votes going on in the county of Tweeddale?—I have been informed so.

9918. *Lord Stormont.*] On both sides?—I can speak to the fact of there being very little going on on the liberal side.

9919. *Chairman.*] Are you informed that many are created on the other side?—I have been informed of it; I have no certain information.

9920. Is it from personal observation that you state that there is a strong feeling upon that subject in the county?—It is from having mixed a good deal among the constituency in the county, and from hearing repeated observations upon it from them.

9921. Are those observations made entirely by persons engaged in politics, or also by persons who appear to be impartial observers?—By persons not engaged in politics at all; just the ordinary population of the county, both electors and non-electors.

9922. Is there any reason to apprehend that this may produce a tendency to disturbance in the event of an election in the county?—I think it is not by any means improbable that it may tend to produce disturbance in the county.

9923. Do you state that from your own observation, or from what you have heard from other persons, who are well acquainted with the county?—From the feeling that has been expressed to me in regard to this system of creating votes, and from the observations of others, I should be afraid, unless good care is taken, that in the event of an election there may be some disturbance and rioting. I remember a circumstance to which I did not pay much attention at the time, but it struck me a little; I remember Mr. Wood, the sheriff of the county, stating to me at the close of the Appeal Court at Jedburgh, that in the event of an election, there might be some disturbance in the borough of Peebles, and he said, "he intended to swear me and my friends as special constables;" I treated it as a joke at the time, but he seemed to be quite serious.

9924. *Lord Stormont.*] What party in the county do you think is likely to create disturbance in consequence of these votes having been created; is it the

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conservative or the whig party that is likely to create a disturbance, which would be dangerous to the public peace?—I am sure I do not know; I do not think it is likely that any of the electors would create a disturbance.

9925. Which party would be likely to do it; would it be the conservative or the whig party?—I do not know whether I can precisely answer that question; I only know the conservative and the whig party in that county, by the men with whom I am personally acquainted, and by having canvassed the county; I do not know the precise politics of every inhabitant in the county; I do not think it is in the least likely that any of the political party with whom I am personally acquainted or whom I have canvassed, would create any disturbance; quite the reverse; but when I am speaking of the possibility or the likelihood of a disturbance in the county in consequence of the creation of those votes, I do not speak of the electors, who are the persons that I personally come into contact with.

9926. Are you acquainted with any conservatives who are likely to make a disturbance in the county?—I am not; neither am I acquainted with any whigs that would be likely to do so.

9927. Who are the persons that you conceive are likely to create this disturbance in the county?—If any disturbance did take place, the persons likely to create it would be the non-electors; I understand that there have already been riots in the borough of Peebles upon the occasion of former elections.

9928. On account of the creation of votes?—No, it was previous to the passing of the Reform Act.

9929. Then that had nothing to do with the creation of those votes?—No.

9930. What are the reasons that make you apprehend there will be a disturbance of the public peace?—There seems to be a general indignation prevailing over the county against these creations, and the people's feelings are excited upon the subject.

9931. Do you apprehend that there is a settled intention of creating a disturbance of the public peace?—Certainly not.

9932. Are there any persons going about the county endeavouring to create a disturbance of the public peace?—None, to my knowledge; I should think not.

9933. Is there any rumour in the county that there is to be a disturbance of the public peace?—No, there is not.

9934. Have you heard from any person or persons that there is to be a disturbance of the public peace?—No.

9935. Then in what manner does the indignation of the people show itself?—They express their indignation by words, of course, by expressing their sentiments upon the subject.

9936. In the expression of those sentiments, have they ever said that they intended to break the public peace?—I have not heard any person say so.

9937. Do you know any person that ever has heard any body say so?—I never heard any one particularise persons who said so.

9938. Are the magistrates of the county apprehensive that there is to be a disturbance of the public peace; the sheriff or any of the public authorities?—I have already stated what took place between Mr. Wood and me, who is the sheriff of the county.

9939. Did the sheriff say that he meant to swear you in as special constable, because there had been some life-rents created?—The sheriff stated to me that in consequence of such creation of life-rents, and the introduction of so many stranger voters into the county, there was a possibility of riot taking place, and that both my friends and the opposite party might equally suffer; "but," says he, "I intend to swear you in as constable;" I considered it, I must say, as a joke at the time.

9940. At what time was this?—At the end of the Appeal Court, which was held last autumn at Jedburgh.

9941. Did he say that it was in consequence of the creation of life-rents that he apprehended a disturbance of the public peace at the next election, whenever it might happen?—He stated that it was in consequence of the introduction of stranger voters into the county; whether he specified life-renters I do not remember.

9942. Did he consider that you, as the political agent for Mr. Carmichael, were in some measure responsible for a breach of the peace which might arise in consequence

consequence of your having been employed to create some of those votes?—I do not know what the sheriff considered as to that. Mr. G. Rutherford.

9943. Were there not a great many houses purchased in the months of December and January in the towns of Peebles and Linton and the other villages of the county?—A good many.

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9944. Were those houses purchased for political purposes?—I should think so.

9945. Do you know a house at the Bridge-end that was purchased by Mr. Thomas Milne?—I do.

9946. When was that purchased?—I did not conduct the purchase; Mr. Milne purchased it himself.

9947. Was money paid for it?—I believe it was; Mr. Milne told me that he paid money for it.

9948. Was it paid by himself?—By himself; Sir Thomas Carmichael mentioned to him, after he understood that the purchase was made, that as he intended to leave him a sum of money in his will, he said he might as well pay his legacy now as after; Mr. Milne answered, “No, I have purchased this property, and I mean to pay it with my own money;” and Sir Thomas Carmichael did not advance the money.

9949. Have any additional buildings been made to that property?—I have not been there for some time, and I do not know whether there have been lately any additional buildings.

9950. Do you know a property of some houses at Linton that were purchased in the month of November from Robert Cleghorn?—I did not conduct that purchase.

9951. Has William Napier inrolled?—He has.

9952. What is he?—He was butler to Sir Thomas Carmichael.

9953. Is he dead?—He is dead.

9954. Do you know whether that purchase was paid for?—I was told by Napier’s agent that it was paid out of his own funds; Sir Thomas Carmichael did not advance it.

9955. How long has Napier been dead?—He has been dead two or three months.

9956. Who is in possession of it now?—It must be in possession of his heir; his children are minors.

9957. Do you know what the rent was at the time of the purchase?—I have been told that it was somewhat below 10*l*.

9958. Was an additional house built to it?—There was an additional building put to it to make up the value of 10*l*.

9959. Do you know who paid for that additional building?—I do not know, but I should think it was Napier, he having purchased the property with his own money.

9960. Do you know where the wood came from for that building?—I do not know.

9961. Was James Proudfoot registered in that year out of some houses at Linton?—He was.

9962. Which he purchased in December 1835?—I think it was in December.

9963. What is he by profession?—A carpenter.

9964. Do you know the sum he paid for them?—I think it was about 200*l*.

9965. Were you the agent in that transaction?—I drew the disposition.

9966. Did you make the bargain for him?—No, I did not.

9967. Who made the bargain?—I think it was himself and Mr. Robertson, a farmer in the immediate neighbourhood of Linton.

9968. Did he pay for it?—Part of the money was advanced by Mr. Carmichael to him, and he paid a portion of it himself.

9969. How much of it was advanced by Mr. Carmichael?—Holding the price to have been 200*l*., which I think it was, I think that Proudfoot paid 50*l*. himself, and granted Mr. Carmichael a bill for the balance of 150*l*.; the whole of the money was advanced at the time by Mr. Carmichael, and afterwards Proudfoot paid 50*l*. on account of the price, and granted a bill for the balance, intimating at the same time, for I took the bill from him, his intention to pay up this money as speedily as he could; he is a man of some property; a man of very excellent business, and he has property worth some 16*l*. or 17*l*. a year in the neighbouring county of Lanark, and his mother-in-law has a good deal of money, and when she dies, he succeeds to it.

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9970. Is there any heritable bond for that?—I am not aware of any; there was none at the time of the purchase.

9971. Then the bill is upon no security, except his personal security?—The personal security of Proudfoot, which I reckon quite ample.

9972. Adam Penman and James Penman, who purchased a property at Tweed Green, in Peebles, in that year; what was the price they paid for it?—I do not know; I did not conduct the purchase; it was Mr. James Penman's brother-in-law, Mr. Thorburn.

9973. Is that the provost?—It is.

9974. Was there no agent employed?—Mr. Fotheringham was employed, who acts along with me, a writer in Peebles.

9975. Do you know whether they paid the money?—I believe they did; at all events no assistance was given either by Sir Thomas Carmichael or Mr. Carmichael, to either of them.

9976. Was the price paid by Provost Thorburn?—I think it was; I think the price was settled upon the Saturday night, and Provost Thorburn drew a draft upon his cash account for the amount of the price. But I speak from mere recollection of the information that was given to me; for I did not know any thing about it myself.

9977. What line of life are those persons in, Adam Penman and James Penman?—Adam Penman has a farm in the neighbourhood of Edinburgh; James Penman was a farmer in Peebles-shire, a tenant of Sir John Nasmyth's, and has now taken a farm in Roxburghshire. Mr. James Penman has been occupying that house which was purchased by his brother and himself up to Whitsunday last.

9978. Do you know the property which was purchased by Thomas Borrowman, at the Old Bridge at Peebles?—I do not know that property; in fact I can give very little information about purchases in Peebles, because they were conducted either by the parties themselves, or by Mr. Fotheringham, who I understand is to be examined as a witness, and he can give more precise information upon the subject.

9979. Are there any purchases that you have conducted of house property?—There was James Watson; I drew the disposition in his favour; he paid the price with his own money; he is a very wealthy man.

9980. Was there no other house?—I drew a disposition by Mr. Alexander Clapperton, a merchant in Edinburgh, in favour of his brother, and his partner, Thomas Clapperton and Michael Johnston.

9981. *Chairman.*] Are they wealthy people?—They are very wealthy people; I also drew a disposition in favour of Mr. Patrick Shaw.

9982. *Lord Stormont.*] Was there a bond over those subjects?—There was a bond for 150*l.*

9983. Does that bond remain?—That bond remains, Mr. Shaw having paid the difference between the amount of the bond and the price of the property.

9984. What was the property worth?—I think it cost Mr. Shaw about 220*l.* or 230*l.*, and he paid the difference between 150*l.* and the price of the property; the reason for the bond remaining upon the property, which Mr. Shaw was perfectly willing to pay off, was, that Mr. Fotheringham, who was the agent for the bond-holder, represented to Mr. Shaw that he, Mr. Shaw, would only pay four per cent. upon the 150*l.*; whereas he was getting about six per cent. upon the price that the property cost him, so that by paying only four per cent. and getting six per cent., he was making a positive gain.

9985. Were you employed professionally in any capacity in the purchase of any property, where Sir Thomas Carmichael or Mr. Carmichael advanced the money for the purchase, either in whole or in part?—I have no recollection of making any bargains about the purchase of those properties; almost the whole of those bargains were either made by the parties themselves who obtained conveyances, or by Mr. Fotheringham where they were fees. I understand the question not to have any reference to the properties on which life-rents were created.

9986. *Chairman.*] Do you know how the money was paid?—I believe that assistance was given by Mr. Carmichael to several of the purchasers of properties in the county of Peebles; but Mr. Fotheringham will be able to state precisely the sums that were advanced, when they were advanced, and whether to the full extent of the purchase-moneys or only in part.

9987. Do you know how much money was employed by Mr. Fotheringham upon the whole in that way?—I think about 1,000*l.* There is another disposition that

that I drew ; I did not transact the purchase, but I drew the deed. It is that *Mr. G. Rutherford.*
of the Rev. Hepburn Renton.

9988. *Lord Stormont.*] Did he pay the money?—Yes, I paid the money,
for him ; it was furnished to me by Mr. Renton's brother ; neither Sir Thomas
nor Mr. Carmichael had any thing to do with it.

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9989. Do you know whether interest has been paid upon those bills, which
you stated were given by nine individuals?—I do not know ; for those bills,
upon being received by me, were handed over to the private agent of Mr. Car-
michael, to Mr. Cormack, one of the partners of the firm of Gibson Craigs &
Wardlaw.

9990. Do you know whether there was any arrangement that the interest of
the bills should not be paid till after the rents were collected?—I do not know ;
there was no such arrangement made by me.

9991. *Chairman.*] Do you know that Mr. Cormack is fully acquainted with
all the pecuniary transactions between the house of Gibson Craigs & Wardlaw
and Sir Thomas Carmichael and Mr. Carmichael?—Yes, Mr. Cormack takes
charge of the cash and books of the firm, and he must be intimately acquainted
with all such pecuniary transactions.

9992. Is he as able to give information with regard to those pecuniary trans-
actions as Sir James Gibson Craig is?—Quite equally so ; I would say more so,
the cash transactions being under his direct charge.

9993. *Lord Stormont.*] When the prices were paid by those 12 life-renters
whom you mentioned before, was the money paid by them or advanced by any
person?—It was entirely paid by themselves ; when I say so, I know nothing to
the contrary ; they were all able to pay ; they brought the money and paid the
prices over to me at the time of the signing of the disposition.

9994. Are you aware that the money has been repaid since?—I do not believe
that it has ; it is not in the least likely that it has ; I am not at all aware of it.

9995. You do not know that the money has been repaid, and bills taken in
place of it?—I do not know of any such thing, and I believe that no such thing
has taken place ; and, I may add, that those who granted bills at the time
expressed a determination to pay them at a future period ; although it was not
quite convenient for them to advance the money precisely at the time, they are
all men perfectly able to pay the bills.

9996. Did not Sir Thomas Carmichael purchase houses and land at Bridge-
end from John Wilson, over which you have a life-rent?—The purchase was
made, and the conveyance was taken to myself in life-rent, and to Mr. Car-
michael in fee ; I prepared that disposition, and I paid the value of my
life-rent.

9997. *Chairman.*] In money?—In money ; and I have drawn the rents of it
since.

9998. *Lord Stormont.*] Did not Dr. John Renton purchase from William Ste-
venson some houses in Linton, over four-fifths of which James Montgomery was
inrolled as a life-renter?—He did.

9999. Did you conduct that purchase?—No, Dr. Renton employed an agent
of his own, Mr. Henderson.

10000. Do you know how the purchases were arranged?—I was told that Mr.
Montgomery paid the money for that life-rent.

10001. Was there an exchange of life-rents between Andrew Carr, in Selkirk,
and John Patterson, an ironmonger in Peebles?—Yes.

10002. Did Alexander Gray also acquire a life-rent from his brother?—Yes.

10003. Was Mr. John Wilson, advocate, inrolled on a life-rent over the house
of Mr. Fotheringham?—Yes ; those are included in the 34 life-rents that I men-
tioned before as having been created by the liberal party.

10004. Was William Jackson one of them?—Yes ; William Jackson's father
gave him a life-rent.

10005. *Chairman.*] Will you look at the list now shown to you in page 137
of the Minutes of Evidence, which purports to be a list of the whig life-
renters inrolled in 1836, and state whether it is correct?—It appears to be so,
except that Sir Thomas Carmichael is stated to have conveyed a life-rent to me,
whereas it was a purchase from Mr. Wilson, which was conveyed to me in life-rent,
and to Mr. Carmichael in fee ; and, in the case of Thomas Mitchell, it cannot
properly be called a creation, because his life-rent arose out of a family arrange-
ment with which Sir Thomas Carmichael had nothing to do.

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10006. Are

Mr. G. Rutherford.

10006. Are you acquainted with the creation of votes in other counties?—Yes, I was made aware of their being created to a great extent.

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10007. In what counties?—Particularly in the counties of Roxburgh and Selkirk.

10008. How came you to be acquainted with the county of Roxburgh?—I am a native of the county of Roxburgh; and my brother, who is a writer in Jedburgh, is one of the agents for the liberal party in that county, and from him and the other agents, with whom I am intimately acquainted, I have received information; I am also intimately acquainted with the agents for Selkirkshire, and from them I have received information.

10009. As far as your information goes, did the liberal party commence the operation of making life-rents and other votes of that description in the county of Roxburgh?—They did not.

10010. Lord Stormont.] Do you know that as the fact of your own knowledge?—I do not know it of my own knowledge.

10011. Chairman.] What means have you of being acquainted with it?—In consequence of being a member of the liberal committee in Edinburgh for the county of Roxburgh; the state of the constituency in that county has been laid before me by reports from the local agents.

10012. Did you examine those reports?—I did.

10013. Were any proceedings taken by the committee in Edinburgh in consequence of those reports?—Yes.

10014. What was the result of them?—The committee, upon the consideration of those reports from the county, remitted to a sub-committee to consider whether any and what measures should be adopted, in order to prevent or counterbalance the intrusion by the tory party of strangers into the county as voters; I was a member of that sub-committee.

10015. Lord Stormont.] Was that a committee at Roxburgh?—At Edinburgh.

10016. Chairman.] When was this held?—The meeting of the sub-committee, at which they prepared the report to be sent to the general Edinburgh committee, was held upon the 29th of December 1834.

10017. Have you got that report?—I have got a copy of it.

10018. Will you read it?—

[The Witness read the same, as follows:]

REPORT of the Sub-Committee appointed on the 26th December 1834, by the Edinburgh Election Committee for the county of Roxburgh, in the Liberal interest, to consider whether any and what measures should be adopted, in order to prevent or counterbalance the intrusion by the Tory party of strangers into the county as Voters.

The Sub-Committee met at Mr. Robert Bell's house on the 29th December 1834, and consisted of the following members:—

Messrs. Robert Bell, Advocate.
J. S. Newbigging, W. S.
George Rutherford, Writer; and
Andrew Murray, junior, Advocate, Convener.

Having examined the roll of voters in the county of Roxburgh, resident in Edinburgh and its vicinity, and separated them in so far as their political opinions are at present ascertained, into three classes of Liberals, Tories and Doubtful, the following are the results exhibited:—

1st. Edinburgh voters, admitted at the Registration of 1832	-	-	-	59
Of whom Liberals	-	-	-	22
Tories	-	-	-	30
Doubtful	-	-	-	7—59
2d. Edinburgh voters, admitted at the Registration of 1833 and 1834	-	-	-	50
Of whom Liberals	-	-	-	5
Tories	-	-	-	41
Doubtful	-	-	-	4—50

The above analysis shows that a fair proportion of persons resident in Edinburgh and its vicinity, possessed of the requisite qualification at the time of the passing of the Reform Act, were of liberal principles, and also that their numbers have been increased since that period to an extent that may be naturally supposed to arise from the ordinary changes that take place in the acquisition and transmission of property; at the same time, the analysis shows that while the tory party had a small majority of Edinburgh voters inrolled at the first registration after the passing of the Reform Act, their majority has been increased at the subsequent registrations to an extent altogether disproportioned to what would naturally have been expected to arise from the fair ordinary acquisition and transmission of property. These results, therefore, appear to the sub-committee to demonstrate what every one

one acquainted with the county is in fact perfectly aware of, that the tory party since the passing of the Reform Act have resorted to a system of swamping the true local constituency, by introducing strangers into the county as voters who have no other connexion with it, and no knowledge of its affairs. This conclusion is strengthened by the situation and known political opinions of the gentlemen who have been thus registered.

The sub-committee understand that a more extensive analysis of the roll of voters registered since 1832, showing the number of the *other strangers* introduced into the county as voters, and their respective political opinions, would still more clearly demonstrate the truth of the conclusion to which the sub-committee have thus come upon a view of the Edinburgh voters alone.

In these circumstances the sub-committee have unanimously agreed to the following Resolutions:—

1. That it has become a serious and important question to urge upon the consideration of Parliament whether *residence* (of at least of those generally called ten-pound voters) should not be required in counties, in order to prevent the farther growth of an evil which has already spread to such an alarming extent, and is likely to be attended with such unconstitutional effects.

2. That in the meantime and until such preventative measures may be taken by the Legislature, means should be immediately taken to represent to the liberal parties throughout the country that in fairness and justice to the county of Roxburgh they ought to come forward and aid in restoring to the true constituency the effectual exercise of the elective franchise, of which they appear to be thus in danger of being deprived.

3. That with the view of carrying this resolution into practical effect, measures should be immediately taken by the committee to ascertain, first, What properties could be obtained upon which votes might be created at the next Registration Courts, and the terms on which they could be purchased, whether in life-rent or in fee; and, second, What gentlemen would be willing to accept conveyances of such properties previous to the 30th January next, so that if possible a sufficient number of liberal voters might be inrolled to counterbalance the injurious and unconstitutional effect already produced.

4. That in presenting this report, the sub-committee feel perfectly satisfied of the political morality and justice of the measures which they thus recommend, and which they conceive to be justified by the circumstance of their being used *merely in defence*. The introduction of strangers into the county as voters for the purpose of *depriving* the true constituency of the effectual exercise of their elective franchise is unjust and unconstitutional; but it is just and proper to use similar means to *restore* to the true constituency the right of which it is thus attempted to deprive them.

Reported by

(signed)

Robt Bell.

Geo. Rutherford.

J. Stewart Newbigging.

And. Murray, jun., Convener.

Edinburgh, 29 December 1834.

10019. Does that express the opinion you formed after the inquiries you made into the subject?—It does; this report was laid before the general Edinburgh committee, and approved of; copies of it were sent to the different local committees in Roxburghshire, and also approved of by them; it was afterwards fully considered by the general committee for the county held at Jedburgh, and approved of by it, and the suggestions made by the sub-committee carried into effect to a considerable extent.

10020. Are you of opinion that the creation of such votes would have been improper unless it had been previously done by the other party?—I am.

10021. Had Captain Elliott, who was the candidate for the county of Roxburgh on the liberal side, any knowledge of your report or proceeding?—He had not at the time; he was subsequently made aware of it.

10022. Was it entered into without any communication or suggestion from him?—Entirely; a number of Roxburgh electors resident in Edinburgh formed themselves into this committee without consulting Captain Elliott upon the subject at all.

10023. Lord Stormont.] Those very electors who entertained such horror of strangers being introduced into the county as voters, were themselves strangers, were they not?—No.

10024. Were they not resident in Edinburgh?—Yes, but they were mostly natives of the county, and a number of them had property there from succession, or property which they had acquired previous to the passing of the Reform Act.

10025. All of them?—Certainly not.

10026. How many did this committee consist of?—I do not remember the number, but a great many.

10027. What sort of number?—Between 20 and 30.

10028. And they were all non-resident?—They were all resident in Edinburgh.

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10029. They

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10029. They were all non-resident?—I do not remember all the names of the committee, therefore I cannot say that they were all non-resident; some of them might have had houses in the country.

10030. Did they feel that they themselves were so particularly and intimately acquainted with all the concerns of the county of Roxburgh, that they were unwilling that any other persons resident in Edinburgh should have a vote for the county of Roxburgh?—I cannot say that they so felt upon the subject; their sentiments are embodied in this report; they felt certainly strongly, that a number of strangers totally unconnected with the county, not only non-resident, but men that had no connexion with the county, and no interest in it, who had never thought of purchasing property there till the passing of the Reform Bill,—they felt indignant that such men should come into the county, and swamp the natural constituency of it.

10031. Can you furnish the names of the committee that sat in Edinburgh?—I have no means of doing so here.

10032. Were any of the sub-committee resident in the county of Roxburgh?—No.

10033. What connexion had they with the county?—Mr. Robert Bell is proprietor along with his brother of a very considerable property in the immediate neighbourhood of Jedburgh; he and his brother William very often attend county courts there; my connexion with the county is, having been born there, having most of my relations there, and any little landed property that my father left being situated in the immediate neighbourhood of Jedburgh; Mr. Newbigging is a relation of a considerable proprietor in the county.

10034. What relation?—I cannot say what precise relation; Mr. Andrew Murray is the eldest son of Mr. Murray, of Crosslee, who has an estate in the county.

10035. That report states, that the committee considered that it was unconstitutional to make those votes, but that they did not consider it unconstitutional for the liberal party to make votes, after the tory party had done the same?—The report states, that the introduction of strangers into the county as voters, for the purpose of depriving the true constituency of the effectual exercise of their elective franchise, is unjust and unconstitutional; but it is just and proper to use similar means to restore to the true constituency the right of which it is thus attempted to deprive them.

10036. Were most of those who signed that report lawyers?—They were all, without exception, advocates or law agents. The report also stated that the measures recommended by the sub-committee were merely in self-defence.

10037. *Chairman.*] Are you of opinion, that at the time of the Reform Act, such life-rents as have been made in Scotland since by constitution were contemplated?—No, I do not think they were contemplated.

10038. Have you examined different books of styles used by Scotch conveyancers, and have you found any instance of life-rents of that kind, where the life-rent was constituted by a grant from the feuar retaining the property?—I have examined Dallas, of St. Martin's, styles; Bell's styles, and the Juridical Styles, and in neither of them have I been able to find a form of disposition such as is mentioned in the question of a life-rent granted by a proprietor who retains the fee to himself.

10039. Have any remedies occurred to you to prevent the creation of such life-rents?—Several.

10040. What are they?—The first which I think would be the most effectual remedy is, to give no man the right of voting at elections in more than one county.

10041. *Lord Stormont.*] Would you confine that merely to Scotland, or extend it to England also?—I have not considered it with reference to England.

10042. Do you think you could do it in Scotland, and not extend it to England and Ireland also?—I think it is very likely that the Legislature in passing an Act to that effect for Scotland, would also pass a similar Act with regard to England and Ireland.

10043. *Chairman.*] Do you think it would be of advantage to require residence?—I think making residence necessary, would be a great advantage.

10044. Would you require residence in all cases?—No, I would not; I would make residence necessary, unless the voter held property to a greater value than the present 10*l.* qualification.

10045. For

10045. For estates of what value would you allow non-residence?—Fifty pounds a year, I think, is a good amount. Mr. G. Rutherford.

10046. Lord *Stormont*.] Do you see any principle of justice in such a regulation?—Yes, I do. 24 May 1837.

10047. In what respect?—I think it is just that the natural constituency of the county should have the election of the representative, and that strangers should not be intruded upon them, who acquire property for the mere sake of acquiring the franchise; and I think it is very unlikely that a person would purchase property to the annual value of 50 *l.* for the purpose merely of acquiring the franchise.

10048. Do you consider that a person in possession of a qualification of 50 *l.* a year being non-resident, is more fit to use his franchise for the benefit of the country, than a man who has only 49 *l.* a year?—No.

10049. Then do you consider that that would be fair towards the man who has only 49 *l.* a year, and is non-resident?—Just as fair as allowing a man that has 10 *l.* a year to vote, and not allowing the man that has 9 *l.* 19 *s.* a year, to vote.

10050. Has not the Legislature already decided that a person who is possessed of 10 *l.* a year is entitled to have a vote?—Yes.

10051. Upon what principle of justice would you disfranchise him after having given the franchise to him?—The object that I have in view in making residence necessary is, to preserve to the natural constituency of the county the right of choosing the representative; I conceive that that right has been infringed upon by strangers being introduced into the county, and although some of the natural constituency might by such a regulation be deprived of the franchise which has been conferred upon them by the Legislature, yet there would be a greater benefit, than what that is an injury in depriving the strangers who have been so introduced of their right to vote.

10052. May not a man who possesses 49 *l.* a year in the county, and is non-resident, have as great, if not a greater interest in the welfare of that county, than a man who is resident, and who possesses 10 *l.* a year?—He may; but in fixing any particular sum, which the Legislature in passing the Reform Bill thought it necessary to fix, you must have a point at which to stop; and although a man who is possessed of 9 *l.* 19 *s.* rental may have an equal interest in the good of the country as a man who has 10 *l.* a year rental, yet the Legislature has thought proper to fix 10 *l.* as the qualification; I state this by way of analogy.

10053. Do you consider that such a law could be passed with reference to Scotland without its extending to England and Ireland also?—I do not feel qualified to give any opinion as to that.

10054. *Chairman*.] Are you of opinion that any restriction ought to be established upon the creation of life-rents in future, or on those already made?—I think that all life-rent qualifications whatever ought to be abolished, and the right of voting confined to the fee, with the exception of life-rents by office, marriage, succession and family settlements.

10055. On what ground?—Upon the ground that I do not think that life-rents by constitution were contemplated by the Reform Bill; such rights were not known in Scotland prior to the passing of the Reform Bill, with the exception of life-rent superiorities.

10056. Lord *Stormont*.] Were such rights known in England?—I am not aware; I am not acquainted with English law.

10057. Do you believe that there are such things as life-holders in England?—I do not know, but I presume there are.

10058. *Chairman*.] Have there been many votes created on leases of 57 years, or life-rent leases with a 10 *l.* interest?—There do exist a great many long leases of 57 years and upwards, in Scotland, and many individuals are inrolled upon those leases.

10059. Do you conceive that that qualification might be made a source of abuse?—I think life-rent leases, which afford a qualification under the Act, might be made a great abuse, because I think they might be more easily created, and with much less inconvenience to the proprietors, than life-rent qualifications by conveyance. I have been informed that in Stirlingshire a good many life-rent leases have been granted, upon which individuals have been inrolled.

10060. Do you conceive that there ought to be any restriction upon joint tenancies of 50 *l.* and upwards?—I think there ought.

Mr. G. Rutherford. 10061. Why?—Because residence upon farms not being requisite, it is quite possible for landlords to assume into leases as many as the rent will afford a 50 l. qualification for.

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10062. What restriction would you make with regard to joint tenants?—I would restrict the right of voting to two.

10063. Are you of opinion that the requiring infeoffment would prevent votes being improperly created?—I do not think so; it would create more expense; it might make people more chary of granting life-rent conveyances and other estates; but in a keenly-contested county, I do not think that the expense would at all stand in the way of such conveyances being granted.

10064. Would there be hardship in requiring infeoffment in cases where parties succeeded to property?—I think there would be a considerable hardship in that.

10065. In Scotland has it been usual to possess small properties from father to son without infeoffment?—A great many title-deeds of small properties have come into my hands, and I have known many cases where properties have descended from father to son without infeoffment.

10066. Lord Stormont.] Have you not known properties lost in consequence?—I never knew any lost in consequence; I have known small properties held under dispositions on which no infeoffment had been taken for many years back; a disposition granted by the last person feoffed, and then a disposition and assignation of that to another purchaser, and then a disposition to another purchaser, and so on, to the extent of three or four dispositions.

10067. Do you think the deduction of real burthens would tend to prevent the improper creation of votes?—I think so.

10068. Lord Stormont.] Would you recommend the deduction of real burthens from all property?—Yes, I would; but not that alone; I do not think the deduction of real burthens would alone be a preventive.

10069. What should accompany it?—The remedies I have mentioned before, of residence, and the extinction of life-rents, as above stated.

10070. Are there any other observations that occur to you?—I would make residence within the county a requisite in cases of tenancy qualification.

Veneris, 26^o die Maii, 1837.

MEMBERS PRESENT.

Mr. Divett. | Captain Ferguson.

THE LORD ADVOCATE IN THE CHAIR.

Mr. George Rutherford, called in; and further Examined.

Mr. G. Rutherford. 10071. Chairman.] ARE you acquainted with the circumstances of the joint tenancy of Walter Watson?—Yes, I am; he succeeded to his father as tenant of his farm; his father left a widow and three sons besides Walter; Walter got the farm as heir-at-law, and the widow and the other sons succeeded to the personalty of the deceased as executors; but the whole family occupied and managed the farm jointly; Walter having fallen into bad health, made a proposal to Sir Thomas Carmichael, the landlord, to assume the three younger sons into the lease, as he had no hopes of his own recovery, and wished the affairs of the family to be so arranged as to prevent any disputes after his death; Sir Thomas Carmichael was averse to this proposal, and endeavoured to dissuade Walter Watson from carrying his intention into effect; but the latter had made up his mind on the subject, and at his entreaty Sir Thomas consented to assume his three brothers.

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10072. Can you state whether this was done with any political views, or at the desire of Walter Watson?—It was entirely at Walter Watson's desire; Sir Thomas himself never contemplated any such thing; Walter Watson is now dead, and his three brothers are now resident, and are managing the farm as joint tenants, but they are not yet enrolled.

Martis, 30^e die Maii, 1837.

MEMBERS PRESENT.

Mr. Walter Campbell.
Mr. Divett.
Mr. Fox Maule.
Mr. Edward Buller.

Captain Ferguson.
Mr. B. Baring.
Sir Hugh Campbell.
Mr. Warburton.

THE LORD ADVOCATE IN THE CHAIR.

David Laing, Esq., Surgeon, called in; and Examined.

10073. *Chairman.*] I BELIEVE you are a medical gentleman?—I am a *David Laing, Esq.*
surgeon.

10074. At Thurso, in the county of Caithness?—Yes.

10075. How long have you resided there?—Since 1821.

10076. Are you a Justice of Peace for the county?—I am.

10077. Are you well acquainted with the property in Castletown belonging to Mr. Traill, senior?—Yes.

10078. Have you been frequently there, and do you know the people residing there upon it?—Very frequently.

10079. Do you happen to know whether Mr. Traill, senior, the proprietor, was desirous to extend that village before the Reform Bill took place?—I know he was.

10080. What was the course he pursued in that village with regard to his property there?—As far as I know, it was his wish to let it out into feus.

10081. Do you know whether Mr. Traill ever interfered with politics in the county of Caithness?—Never, so far as I know.

10082. Was he supposed to have any political bias towards the liberal side?—He was always supposed to be a tory.

10083. But he never interfered?—No, he kept himself quite aloof from politics.

10084. Do you know any thing with regard to the feus Mr. Traill granted on that property about two years ago, since the Reform Act?—Yes, I think I do.

10085. On what terms were they granted?—All in feus; the feu-right was sold.

10086. Were they granted at fair rates?—Very fair rates; I would say, high rates.

10087. Do you know if they were given to any persons as matter of political favour?—I do not think they were.

10088. Do you know whether Mr. Traill publicly intimated his intention to sell those feus?—He did.

10089. Were they open to all persons to offer for them, or only to persons of certain political opinions?—They were open to all.

10090. Were the terms on which they were in general granted advantageous to Mr. Traill's property or otherwise?—I believe the sales were highly advantageous to his property.

10091. Do you know whether the purchasers acquired them under an understanding that they were to vote as Mr. Traill chose?—They were told distinctly that there was to be no understanding with the purchasers of the feus how they were to vote.

10092. How came you to be acquainted with that circumstance?—I am the medical attendant of the family; Mr. Traill was unwell at the time these sales were brought about, and it was from conversation with himself; he told me there was to be no understanding of the kind, and that the people were at full liberty to vote for whom they chose.

10093. Do you know many of the persons who acquired those feus?—Many of them, mostly all.

10094. Do you recollect how many there were?—Eleven.

10095. Have you a list of them?—I have a list.

10096. Would you furnish the Committee with a list of them?—I have the names of them on my notes.

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10097. What

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10097. What did you take your list from?—From the notes of the sheriff taken at the court.

10098. How many of those 11 are you acquainted with?—I am very well acquainted with all of them except two ; I know them all, but I am particularly well acquainted with six or seven of them ; I am very well acquainted with seven of them.

10099. Can you point out any of them who were unable to pay the price of those feus?—I believe they are all perfectly able to pay.

10100. Do you happen to know whether they have paid?—I believe they have all paid.

10101. From what information do you make that statement?—From making inquiry of Mr. Traill's manager and his clerk.

10102. Did they grant bills for the feus?—I am not aware of the particulars of how it was paid ; there may have been, with regard to Mr. Purvis ; he granted a bill, but I am not aware of any of the others.

10103. Who is Mr. Purvis?—He is manager for Mr. Traill.

10104. Do you know whether Mr. Purvis, at the time he made that purchase and since, has been considered a person in good credit?—I have always known him, and he has always been considered in the county to be a man of good credit.

10105. Do you know whether he had met with any misfortune, whether his circumstances had been different at any former period?—I understood so the other day.

10106. At what period?—It must have been more than 20 years ago, as far as my recollection goes.

10107. What happened to him at that time?—I understand he then had to apply for a *cessio*, or to sue for a *cessio bonorum*.

10108. Do you know from what circumstances?—Generally, I think it was from some misfortunes that came upon him in connexion with some of his relations.

10109. How long has he been in the county of Caithness?—Fifteen years at least.

10110. Since you have been in it?—I came near about the time ; of course it must have been about 15 years, I should think.

10111. During the whole of those 15 years what has his credit been?—Very good.

10112. Has he, during that period, fulfilled all his engagements?—All as far as I know.

10113. Are you aware if any persons in the county entertain doubts of Mr. Purvis' credit?—I do not think there is one.

10114. Are you aware of any circumstances which render his credit doubtful except his having been formerly in a situation that obliged him to apply for a *cessio bonorum*?—Not one.

10115. Do you know whether Mr. Traill, jun., the candidate for the county, was in Caithness at the time when the feus took place in the village of Castletown?—He was not in Caithness at the time.

10116. Did you have any occasion to know whether he interfered or took any part in that measure?—I had ; he did not interfere in the least.

10117. How had you an opportunity of knowing that?—I knew it from being in correspondence with him on other matters ; and knowing how the sales were effected by Mr. Traill, sen., I may say that he was not consulted directly or indirectly with regard to those sales.

10118. Did the sales that took place in the village of Castletown exceed the natural demand at the time of that village for houses?—No, they did not ; there were many more purchasers than purchases.

10119. Were the terms the purchasers gave at the time considered low or high?—Very high ; they were considered so high that some went away and would not purchase, considering them too high.

10120. Is that village a prosperous one at present?—Yes, very prosperous.

10121. From what circumstance has its prosperity arisen?—From the flag quarries wrought there.

10122. Do they produce considerable trade?—Very great.

10123. And is there great employment?—Yes, great employment.

10124. Is

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10124. Is feuing going on in Castletown?—It is.
10125. Can you state to the Committee whether you believe if a person of conservative opinions offered for a feu, there would be less chance of his obtaining it than another person of a different opinion?—I believe Mr. Traill would make no inquiries; he would just have the same chance.
10126. Do you know whether any property has ever been purchased by the liberal party of Caithness for the purpose of procuring votes?—None.
10127. If there had been, do you think you would have known it?—I think I must have known it.
10128. Were you a member of the committee of Mr. Traill, junior?—I was.
10129. Do you know whether Mr. Sutherland, writer to the signet, is employed as an agent by Mr. Traill?—He never was.
10130. Were you ever employed as an agent by Mr. Traill?—Never.
10131. Was that ever asserted?—I believe it was.
10132. On what occasion?—At the last Registration Court.
10133. By whom, or in what way?—It was by Mr. Swinton.
10134. On what ground did he assert it; what evidence did he bring forward?—He asserted that I was a partisan or an agent, and of course that my evidence was not admissible in the case which was going on at the time.
10135. What case was that?—It was a case of Mr. David Begg.
10136. Who had tendered your evidence?—Mr. Crawford.
10137. And what was the result?—The result was, that when Mr. Swinton objected to it, Mr. Crawford did not insist on it, as he could prove his point in another way.
10138. Did the sheriff pronounce any judgment upon it?—The sheriff, so far as I recollect, said it would be as well, in such a case, not to take my evidence, but it was not pressed by Mr. Crawford.
10139. What did he mean by that?—I understood him that it was a private matter, and that it would be as well, under the circumstances of the case, my evidence should be proved in another way.
10140. Were there various witnesses to prove the same fact?—Oh yes.
10141. Was there any thing of the transactions entered into between Mr. Traill and the persons who acquired fees at Castletown of a fictitious nature?—Nothing, so far as I know; I am sure there was nothing fictitious.
10142. Did they differ in any respect from the feus usually granted in Scotland in prosperous villages?—No, in nothing, so far as I know.
10143. Are you acquainted with any life-rents that have been granted in the county of Caithness for the purpose of voting?—I am.
10144. When did that first take place?—The last Registration Court in 1836.
10145. Had there been any in the county before that time?—None.
10146. How were they constituted?—By purchasing properties, and individuals getting a life-rent upon those properties from the purchasers.
10147. With whom did the fee of the property remain?—I am not acquainted with the legal terms; the fee remained with the purchaser, and with proprietors where the votes were made on estates which have not been purchased.
10148. Were you acquainted with any life-rents that existed in the county formerly?—I am a life-renter myself.
10149. How was that conveyed?—In 1826 I purchased a property, and paid for it, and ordered the conveyance to be made out in conjunct life-rent to myself and my wife, and my children in fee.
10150. Is this an ordinary mode of settling property in Scotland?—I believe it is.
10151. In what did the life-rents you have referred to that were created differ from that?—They were created for a particular purpose.
10152. Who were they created by?—By different individuals, proprietors in the county.
10153. Can you state who they were?—There was Mr. Donald Horne, Mr. William Horne and Sir George Sinclair.
10154. Can you state the circumstances of any of these life-renters that were made by Mr. Horne?—There was Major Horneyman, Mackay, Alexander M'Tavish.
10155. Who is Alexander M'Tavish?—He is a writer in Inverness.
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10156. Is he a resident in the county?—No; there were also James Rose and Mr. Sutherland.

10157. Who are they?—James Rose is a writer to the signet, partner with Mr. Horne; James Sutherland is a distiller in Inverness.

10158. Is he a resident in the county?—No.

10159. Were these all made on the same property?—Yes; I am going over them. Then there was Major James Williamson.

10160. Where does he reside?—He resides in the county. Then I have to go over William Horne's.

10161. State how these grants were made of his property?—All as life-rent owners.

10162. How was the price settled?—I understand the price was settled by granting bills.

10163. In the case you have referred to of a family settlement, the life-rent and fee made part of the same transaction?—Yes.

10164. On these cases of life-rents you have mentioned being made by the settlement you have referred to, was the life-rent a separate and distinct transaction?—I believe so.

10165. Can you state how the amount of the price was calculated?—No, I cannot.

10166. Do you know if it was paid in money or in bills?—I believe in bills.

10167. Do you know whether these bills have been paid or not?—Some of them may have been paid, and others not.

10168. Do you know what was the condition or station in life of the life-renters generally?—Some of them are very good, and others very poor.

10169. Can you state what proportion of persons were in a good condition of life, and how many were in less prosperous circumstances?—Six or seven of them were in very poor circumstances.

10170. You have mentioned four on Mr. Donald Horne's estates; how many were there on Mr. William Horne's property?—Five on Mr. William Horne's property.

10171. Who were they?—Mr. Gunn.

10172. What is he?—A surgeon; Mr. Darling was another. I do not recollect the names of the other two, but I know there were five, including the school-master at Stircoke, and Lieutenant-Colonel Campbell.

10173. You have stated that votes were made on Sir George Sinclair's estate?—All that were made on his estate were his three brothers.

10174. Could you furnish a list of the different life-rents that were made?—Yes, I could.

[The Witness is requested to deliver in that statement.]

10175. Can you state what is the general feeling in the county with regard to these life-rents?—Very bad; universally bad I may say.

10176. What do you mean by bad?—That they are held in great detestation throughout the county generally.

10177. Why are they held in detestation?—Because they are generally considered to be trammelled voters, not free; there may be some exceptions, but in general they are considered trammelled, not free.

10178. From what circumstances are they considered trammelled?—Because they have been created by political parties for political purposes, and have been put upon the roll as voters in a way that is not considered honourable.

10179. Why is there any thing that is not honourable in a person creating a life-rent vote, for which he pays by bill, or in any other way?—It is generally considered in the county that they have not paid for these votes, and even though many of them may pay, yet they are considered to be under obligations to vote in a particular way.

10180. Did it appear in the proceedings before the sheriffs that they were under obligations to vote in any particular way?—It did; there is one claimant, Mr. Gunn, who said that he might, as a man of honour, think that he used Mr. Horne ill if he supported a candidate against him.

10181. From what do you state that?—From the sheriff's notes, taken in the Registration Court.

10182. Do you speak of the sheriff's own notes?—A copy of the sheriff's notes of cases.

10183. Were

10183. Were you present at the time?—Yes.

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10184. Do these notes, taken by the sheriff, agree with your recollection?—
Oh yes, perfectly; only they are not so full as I recollect in many cases. There was this question put, whether he thought in honour it would be using Mr. Horne ill if he did not support him after this transaction; he declined giving a direct answer to that question.

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10185. Were there any other persons who made similar statements?—Yes.

10186. Can you state who they were?—There was a man of the name of Sutherland; I think there were one or two more.

10187. Mr. Baring.] Does the same unpopularity attach to other fictitious votes that are created on a different qualification?—There is no other kind of life-rent qualification created in Caithness.

10188. But there are other qualifications equally fictitious with these life-rent qualifications you have just enumerated?—I am not aware that there were.

10189. Suppose I wish to convey a house to a given person, and at the same time take a heritable bond to the extent of the full value of that house, might not that be a fictitious qualification?—Yes.

10190. Do you mean to say there are no such fictitious qualifications granted in Caithness?—None on the liberal side, as far as I know.

10191. Suppose such qualification to be granted, would the same unpopularity attach to it?—The very same.

10192. For the same reason?—Yes; that the same unpopularity would attach to it, and to every case where there was a suspicion that it was not a *bonâ fide* transaction; for instance, it was put abroad in the county a good deal as to these Castletown votes that they were the same as the fictitious life-rent votes, and there was the very same feeling against them until it was put down by showing that they were all *bonâ fide* votes actually paid for, and that the people have it in their power to do any thing with the property they choose.

10193. Chairman.] At what rent per acre was the property in Castletown belonging to Mr. Traill feued, as near as you could state?—I have been told by those who are good judges it was about 8*l.* an acre, and I believe it to be so; I can state this, the feu-duties on the Castletown lots sold are higher than in any other part of the county; they are much higher than in Thurso or Lybster where such feus are given.

10194. Mr. Buller.] And the property becomes more valuable to Mr. Traill in consequence of these feus?—Yes, he made a very good sale.

10195. Have you had occasion to form an opinion with regard to any remedy for this system of creating votes?—No, I have not.

10196. Have you any further information to give to the Committee on this subject?—No.

Mercurii, 31^o die Maii, 1837.

MEMBERS PRESENT.

Sir William Rae.
Mr. Divett.
Mr. E. Buller.

Captain Ferguson.
Mr. W. Campbell.
Lord Stormont.

THE LORD ADVOCATE IN THE CHAIR.

The Reverend *John Isaac Beresford*, called in; and Examined.

10197. Chairman.] YOU are a clergyman of the Church of Ireland?—Yes, I am rector of the parish of Donoughmore, in the diocese of Ossory, in the Queen's County.

10198. You are proprietor of an estate at Macbie Hill, in the county of Peebles?—Yes.

10199. Did you make certain conveyances on life-rent to individuals who were afterwards inrolled as electors in the county of Peebles?—I did.

10200. Who were the persons in whose favour they were made?—The Rev. Charles Claudius Beresford, my brother; Robert Fowler, esq., my cousin;
0.32. William

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William Ponsonby Barker, esq., a particular friend of mine; Barker Thacker, esq., my nephew, and William Todd, my gamekeeper.

10201. Did any of the gentlemen reside in the county of Peebles?—None of the gentlemen did, but my gamekeeper does.

10202. When did you grant those life-rents?—In 1836.

10203. At what period?—In the month of January.

10204. Not before January?—It was not.

10205. Did any of those persons apply to you for those conveyances?—No.

10206. Did you offer them to them?—I did, both personally and by letter.

10207. At what time did you offer them?—I rather think in December; in November or December.

10208. Have you any letters or memoranda to enable you to fix the date more particularly?—No, I have not; but I recollect that I was in Scotland in November, so that now I can answer the question; I offered some in December and others in January.

10209. Will you mention the circumstances under which you granted them?—I wrote to them to say that I understood that the radicals were making every effort they could to bring in a whig representative for the county of Peebles, and I asked them if they would take votes in order to keep him out, and to strengthen the interest of my party, meaning the conservative party.

10210. Did you state that any price was to be paid for those votes?—No; I did not then know the price, as I did afterwards; it was fixed according to the age of the parties, and amount of the rental.

10211. Did you understand, in making that offer, that they were accepting the votes to support the conservative candidate?—No, it was not mentioned at all; but, at the same time, I was well aware of their political principles.

10212. Had any suggestion been made to you on the subject by any of the candidates for the county or any other person with regard to making those votes?—There had.

10213. By whom?—Sir John Hay and my agent, Mr. Stewart.

10214. Did they recommend that you should make votes in that way?—Yes, they told me that others were doing it.

10215. Were those others persons of their opinions?—No; they told me that the other party were in the act of doing it, and that Sir John Hay was going to do so likewise.

10216. Had you any meetings or conferences with other gentlemen in the county on the subject?—No.

10217. How was the price of those votes fixed?—According to the age of the person receiving the conveyance; they each granted me a bill for the amount, with the exception of William Todd.

10218. Have you got those bills?—I have.

10219. Have any of those bills been paid?—No.

10220. Has the interest of any of those bills been paid?—I cannot tell.

10221. Then it has not been paid, with your knowledge, the interest of those bills?—No; the rent was only drawn very lately.

10222. You have the bills in your possession?—I have.

10223. And no interest is marked as received on them?—None has been paid, to my knowledge; there is none marked on them.

10224. Sir William Rae.] Might it have been paid without your knowledge?—It might.

10225. To your agent?—Yes, to my agent.

10226. Captain Ferguson.] How long is it since this property was parted with?—In January 1836.

10227. More than a year has expired?—Yes.

10228. Chairman.] Do you know whether they have received any rent?—They have.

10229. What rents have they received?—They have received the rent of five-sixths of a park called the Cornlaws Park.

10230. Through what person have they received it?—Through their agent.

10231. Who is their agent?—Mr. Douglas.

10232. Is that the gentleman who is procurator fiscal?—Yes.

10233. Did they manage that park or property?—It is set in grass; it is a grass park.

10234. Is it let annually, or for a course of years?—Annually.

10235. When

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10235. When was it last let?—In April, for this year.
 10236. Whom is it let to now?—A Mr. Ritchie.
 10237. You have still a sixth interest in that park?—No, I have not.
 10238. Who has the remaining sixth?—I have conveyed it since.
 10239. To another person?—Yes.
 10240. In life-rent?—Yes.
 10241. Have you gone on making life-rents since?—I have.
 10242. In as great a proportion as before?—Greater.
 10243. Have you made them in the same way, or in any different way from those you made before?—Some the same, and others differently; I sold some, and exchanged some for others.
 10244. Are they all made on life-rent conveyances, or only on leases?—All in life-rent.
 10245. Were they to vote in other counties in Scotland?—Yes.
 10246. In what other counties?—Selkirk and Roxburgh.
 10247. Were any of those gentlemen to whom you granted conveyances summoned to attend the Registration Court?—No, not to my knowledge.
 10248. Have any of them been in Scotland since they obtained their vote?—Not to my knowledge, except Mr. Ponsonby Barker.
 10249. Did you understand that they would have occasion to come to Scotland for any other purpose than to vote at the election; any of those four gentlemen?—Yes, they all having relations and friends in Scotland, are very likely to visit that country frequently.
 10250. Have any of the others?—Not this year.
 10251. Sir William Rae.] The estate of Macbie Hill is of considerable extent and value, is it not; 2,000*l.* or 3,000*l.* a year?—Yes.
 10252. Were those persons put on the roll that you have mentioned?—They were.
 10253. Without objection?—There was an objection made at the Registration Court.
 10254. But they were all admitted?—Yes, the objections were dismissed by the sheriff, and subsequently it was arranged by the agents that so many cases (including mine) should not be retried at the Appeal Court; that was the arrangement, to the best of my belief.
 10255. One of those individuals you mentioned to be the gamekeeper at Macbie Hill; has he been long in the service of your family?—Upwards of 50 years.
 10256. Had you previously allowed him an annuity?—Yes, I had; I settled 20*l.* per annum on him for his life.
 10257. When you conveyed to him this right of life-rent, did you hold that as part of the gift you intended for him?—Yes; I deducted the one half of what I settled on him by my will, and I gave him the life-rent charge for the other.
 10258. The subject over which this life-rent is given is this field of Cornlaws Park?—Yes, it is.
 10259. What is the value of that field, do you know?—It was set last year for 83*l.*; this year 85*l.*
 10260. It was set by public roup?—Yes.
 10261. It was so set by the agent of the life-renters?—Yes.
 10262. Who is a different person from your agent?—He is.
 10263. I understand you to say that while you were aware the political principles of these individuals were the same as your own, they came under no obligation or assurance as to the mode in which they should exercise their franchise?—Not in the slightest degree.
 10264. The transaction was a *bond fide* transaction?—It was.
 10265. Captain Ferguson.] The transfer was absolute and without any reservation?—Absolute.
 10266. And without reservation?—Without any reservation whatsoever.
 10267. Consequently, when the interest is not paid on the notes, it is a pecuniary loss to yourself?—It is, but I have no doubt of its being paid.
 10268. Sir William Rae.] The field being let by the agent of the life-renters, they will receive the rents of that field?—They will.
 10269. If they receive the rents of that field on one side, will you not expect, on the other, that they shall pay interest on the price?—To be sure.
 10270. Mr. W. Campbell.] What is the difference between the rent they will draw

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draw and the interest they will pay you on the money?—That depends on how the land lets.

10271. *Chairman.*] Can you state now what is the difference between the rent and the interest of the bills?—Not without making it up; it let this year at an advance of 2*l*.

10272. Would you have made any conveyances of that sort if it had not been with a view to create votes in the county of Peebles?—I cannot say whether I should or not.

10273. Were you ever acquainted with any similar transaction taking place where votes were not being created?—Never, in the same manner.

10274. Had you ever formed any intention of making such life-rents before it was suggested to you in the manner you have mentioned?—No.

10275. Would you continue to make such life-rents, unless with a view to establish political influence?—Certainly not, if the registration roll of the county was to remain in the same state as at present.

10276. Would you acquire life-rents in exchange in other counties with any other view than political influence?—I cannot say.

10277. Have you any other motive for acquiring life-rents in any other counties, but that of obtaining political influence in those counties?—I have not, at present.

10278. Do you contemplate any other reason for acquiring them?—Not at present.

10279. Can you state any other reason likely to arise which would induce you to acquire life-rents in any other counties of Scotland, but that of enabling you to vote in those counties?—Why, I do not choose to bind myself to an opinion of what I may do hereafter.

10280. Can you state any other reason likely to arise which would induce you to acquire life-rents in any other counties of Scotland, but that of enabling you to vote in those counties?—I know of none at present; I do not contemplate doing so at present.

10281. *Mr. W. Campbell.*] As a matter of profit and loss, would you be induced to purchase life-rents as a matter of investment?—If I thought I could get a good bargain I would.

10282. But would you, having property concentrated on one estate, be inclined to purchase life-rents in other counties in Scotland, if not for the purpose of acquiring the political franchise thereby?—No.

10283. *Chairman.*] Are you disposed to acquire further life-rents, in the way you have described, in other counties in Scotland?—I would take some.

10284. Do you see any limit to the number you might acquire in that way, except the number of counties in Scotland?—Yes, I do; it would be no use my taking them, all the elections would be so close to each other.

10285. *Sir William Rae.*] Have you any intention at present of purchasing other life-rents?—Not the least.

10286. *Chairman.*] Have you any objection to parcelling the whole of your property into life-rents, if necessary to support the political party to which you are attached?—Yes, I have.

10287. What objection?—I should not like to have it all cut up into life-rents.

10288. Can you state under what limitations you might dispose of your estate in that way, consistently with your views?—No, I cannot make that statement.

10289. Would you be inclined to dispose of a third, or a fourth, or half?—I really am not prepared to say at present.

10290. *Sir William Rae.*] Whatever you did dispose of, of course the possession would go to the life-renters?—For their lives.

10291. Would you be disposed to put the possession of a great part of your estate in other people's hands?—I should like to know them very well first.

10292. *Captain Ferguson.*] In making these votes, others having property, have you always done so in strict conformity with the law of the Reform Bill?—As far as I understand the law, I have.

10293. And you, in no instance, desire to evade the law?—Not in the slightest degree.

10294. But strictly to conform yourself to its provisions?—Yes.

Jovis, 1^o die Junii, 1837.

MEMBERS PRESENT.

Mr. Walter Campbell.
Viscount Stormont.Mr. F. Baring.
Mr. E. Buller.

THE LORD ADVOCATE IN THE CHAIR.

*David Laing, Esq., Surgeon, called in ; and further Examined.*10295. *Chairman.*] IN your list you have stated certain life-rents made by *David Laing, Esq.*
Mr. Smith?—Yes.

10296. Who is he?—He is a distiller in Thurso.

10297. Do you know whether he purchased the property?—He built the property.

10298. Was it his own ground?—He has it in feu.

10299. Did he grant the life-rents?—He did.

10300. To those persons?—Yes.

10301. Do you know how they were created?—I do not.

10302. Were they made in the Conservative interest?—They were.

10303. Do you know any thing of the circumstances with regard to the life-rents?—Nothing particular.

10304. You have stated that one was made by Sir F. Anstruther to Captain Anstruther ; is that his brother?—Yes, his brother.

10305. Was that made in the Conservative interest?—It was.

10306. You have stated that two were made by Mr. Begg, of Thurso?—Yes.

10307. In what interest were they made?—The Conservative interest.

10308. Were the persons to whom they were granted his relations?—His sons.

10309. You have also stated that Mr. Cook, of Reay, had one?—Yes.

10310. On what species of life-rent was he registered?—On office.

10311. As a parish clergyman?—Yes.

10312. Then Mr. Snody, what is the nature of his right?—I believe just the same as my own, a conjunct fee in life-rent in right of his wife.

10313. And of his children?—No children ; to himself and his wife.

10314. That was in the usual terms of a family settlement?—Yes.

10315. The last in the list is yourself?—Yes.

10316. Then the three last in your list were not life-rents by constitution?—No.

10317. But in the one case a life-rent by office, and the other two conveyances in conjunct fee and life-rent?—Yes.

10318. According to the ordinary form of family settlement in Scotland?—Yes.

[The Witness handed in the following List:]

Names of life-renters made by Mr. D. Horne, of Langwall, on his estate :—Major James Williamson ; Walter Greive, manager, Langwall ; Mr. M'Lachlan, banker, Wick ; Mr. Murdoch, fish-curer, Wick ; Alexander Dawdson, land surveyor, Thurso ; Mr. Rose, W. S., Edinburgh ; Mr. M'Tavish, writer, Inverness ; Mr. Sutherland, distiller, Inverness ; Major H. Mackay, Edinburgh.

Mr. D. Horne bought Mr. Forsyth's and two other properties in Thurso, and divided them in life-rents to the following individuals :—W. Campbell, mason, Halkirk ; James Waters, mason, Halkirk ; Donald Keith, mason, Halkirk ; W. Sutherland, tailor, Halkirk ; Peter Browne, wright, Halkirk ; Sinclair Murray, Halkirk ; Donald Swanson, mason, Thurso ; James Greive, shepherd, Langwall.

Mr. W. Horne, of Stircake, made the following life-rents :—Lieut.-Colonel Campbell Sutherlandshire ; Mr. Gunn, surgeon, Thurso ; Mr. Darling, manager for Mr. W. Horne ; Mr. Shiels, writer, Wick ; Mr. M'Laren, schoolmaster, Stircake.

By Sir G. Sinclair :—Rev. W. Sinclair ; Captain A. Sinclair, R. N. ; Mr. Godfrey Sinclair.

By Mr. Smith :—Mr. Anderson, banker, Thurso ; Mr. John Waters, agent, Wick ; Mr. J. M'Adie, merchant, Thurso.

By Sir Ralph Anstruther :—Captain Anstruther.

By Mr. Begg, Thurso :—Mr. D. Begg, surgeon, Wick ; Mr. A. Begg, merchant, Thurso.

The following were also enrolled as life-renters :—Rev. Mr. Cooke, of Reay ; Mr. Snody, writer, Thurso ; Mr. Laing, surgeon, Thurso.

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10319. Viscount *Stormont*.] How many of the feuars in Castletown granted bills for their feus?—I am not aware of more than one.

10320. Are you sure that there was only one?—I am only sure of one; I know of one, but I do not know how the others were paid.

10321. You stated you were acquainted with all the eleven except two?—I am acquainted with them all, but there are six or seven of them that I am better acquainted with than the others; I know them all.

10322. Are those six or seven all paid?—I believe they have all paid.

10323. In cash?—In cash.

10324. Are there any particular reasons why you should know that?—I inquired before I came away.

10325. Who did you inquire of?—Mr. Traill's manager and his clerk.

10326. Were you not aware of it just before you came away; were you not aware of it at a previous time whether they had paid or not?—I heard reports that they had not paid; that these were not *bond fide* purchases; that they had not paid, or paid by bills; and I made particular inquiries whether they had been paid or not; and from what was told me, and from what I saw, I am convinced all were paid.

10327. When did you make those inquiries?—I made particular inquiries before I came away as to that, but I was making inquiries before; I was making inquiries as to that two or three months ago.

10328. Did they pay in cash at the time of the purchase?—I could not say as to that.

10329. What was the result of your inquiries?—That they had paid.

10330. Did you ask the question when they had paid?—No, I did not ask when they had paid.

10331. Do you know whether they borrowed the money in order to pay?—I know many of them did not require to borrow for that purpose.

10332. I ask whether you know whether they borrowed the money in order to pay?—I do not know; I do not believe they borrowed it.

10333. Are there heritable bonds on that property?—I do not know.

10334. Did you make that inquiry?—I did not.

10335. There might be heritable bonds and you know nothing about them?—Yes.

10336. And you yourself have no means of giving the Committee any accurate information with regard to this property?—I think I can give pretty accurate information with regard to that property.

10337. Can you yourself say whether or not the bills were granted at the time of the purchase of these properties?—I only know one that was granted, namely, Mr. Purvis; I know that many of them were able to pay, had plenty of money to pay these purchases; I did not inquire into the transactions how they were paid; I never inquired of Mr. Traill if he had taken bills or had taken money, but I know the purchasers were able to pay.

10338. I asked first of all whether or not bills had been granted on these properties; I ask you now whether bills might have been granted on these properties at the time of the purchase, and you are not able to give any evidence on the subject?—There may certainly have been bills granted.

10339. There might have been bills granted on every one and you not know it?—Yes.

10340. There might be heritable bonds on every one of these subjects and you not know any thing about it?—Certainly.

10341. And you have never made any inquiries on that point?—No.

10342. At the time that Mr. Swinton objected to your giving evidence in the case of Mr. David Begg, had you been sitting in court the whole time?—I was out occasionally, but I attended very closely.

10343. During the time of the case of Mr. David Begg being discussed?—I could not say exactly I was in all the time of the case being discussed; I did not consider there was any thing particular about his case.

10344. Do you recollect what your position in the court was?—Perfectly.

10345. Were you sitting near the counsel on either side?—I could not sit far away from them, as the place was small and crowded; I sat at the table, and sometimes farther away.

10346. Were you suggesting questions to the counsel to put to the witnesses?—Sometimes I did; I do not know whether I did so in that case.

10347. Was

10347. Was not that likely to make the sheriff conceive that you were an improper person to put in the box as a witness?—I do not know whether it was that or not.

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10348. Did not the sheriff decide that you would be an improper person to put in the witness box?—Mr. Crawford tendered my evidence about a letter, and Mr. Swinton objected to taking my evidence about having seen that letter, as I was an agent, and the sheriff said that perhaps in that particular case it would be as well to substantiate the point in some other way, and Mr. Crawford said he could do that, and therefore they dispensed with my evidence; that is as far as I recollect.

10349. The evidence you were about to give was with regard to having seen the letter?—Yes.

10350. Has there been any other evidence produced to the same effect as that which you could have given?—I do not recollect whether there was evidence produced, but there could have been better evidence than mine produced on that particular point.

10351. Was there any evidence with regard to this letter produced before the court?—I do not recollect; I am not sure; I rather think not, that it was persisted in at all.

10352. Was there any evidence given the same as what you might have given yourself?—I think not; but I am not certain.

10353. *Chairman.*] You were asked whether there were any heritable burthens in the feus at Castletown?—Yes.

10354. And you said you did not know?—Yes.

10355. Do you recollect whether, in any of the proceedings before the Sheriff, there was any statement made that there were heritable burthens, or did it appear?—Nothing ever appeared with regard to any.

10356. Did you ever hear that there were any heritable burthens?—I never heard that there were.

10357. Would you probably have heard if there had been such heritable burthens?—I think I should.

10358. Was the feu-duty granted to Mr. Traill such as was understood to be sufficient for the full value of the property without any heritable burthen on it?—Yes.

10359. *Viscount Stormont.*] You stated before that there might have been heritable burthens, and you not know any thing about them?—Yes, there might.

10360. You cannot speak to the fact that there are no heritable burthens?—I cannot speak to the fact whether there are or are not.

10361. Did you believe that all the purchasers of these properties had sufficient money of their own to pay for them at the time?—I know that many of them had a great deal more, and I was told that they all had and were able to pay.

10362. Do you know a person of the name of Henry Sutherland, a mason?—He is one I am not so well acquainted with.

10363. Do you know whether he borrowed any money?—I do not know.

10364. Or where he obtained the wood to put up his house?—I do not know.

10365. *Mr. W. Campbell.*] State the circumstances, with regard to that letter, as to which your evidence was not taken?—The case was this: it was the case of Mr. David Begg, who was the claimant on the life-rent given by his father; he was at Glasgow at the time, and had written a letter to his father wishing to draw back from taking the life-rent, as he did not approve of taking an oath in that way, considering that he would have to take the oath that he had paid it; and he declined going into the transaction altogether, particularly with regard to the way his mother was situated. This letter was addressed to his father; a friend of the family—(no relation, I believe)—a friend of the family got this letter from the family, either from his father or his mother. This friend showed me the letter, and it was about that letter that the question was raised whether I should be a proper witness. Now the person that had received the letter from the family had it in his possession at that time, and was in court, and could be called as a witness instead of me, who only saw the letter through him. These are the facts of the case.

10366. It was on account of the better evidence, you conceive, being in court that your evidence was rejected?—Yes, and I was not very willing to be an evidence; it was a letter shown me in confidence, and I considered that it would

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be much better that the person who had the letter, and got it from the family, should be called as an evidence about what was in that letter.

10367. Your opinion therefore is, that your evidence was only rejected on the score that more direct and better evidence was in court than that which you could give?—Yes, the gentleman who had the letter in his possession could be called at any time.

10368. Viscount *Stormont*.] Who was the person to whom the letter was addressed?—To his father; the claimant addressed this letter to his father.

10369. The letter, you say, was addressed to the father?—Yes.

10370. Was not the father examined?—Yes.

10371. Was that question ever put to him with regard to that letter?—I am not sure; I forget; the son was examined, and he confessed about the letter.

10372. Did he state the contents of the letter?—Yes.*

10373. The father was not examined with regard to the letter he received from the son?—I do not recollect the father having been examined, but I know David Begg, who wrote the letter, was examined on it, and stated the contents of it in court.

10374. There was a paragraph in that letter, desiring the father to withdraw the son's claim?—Yes.

10375. For what reason did the son wish that claim to be withdrawn?—That he did not like to take that oath, that it was a *bond fide* purchase, and particularly that it might interfere with his mother's settlement, so far as I recollect.

10376. Was any thing said about the old trust oath?—I could not say positively whether he referred to the old trust oath; but he referred to taking the oath.

10377. Was it the old trust oath?—The oath; I am perfectly sure there were no such words as the old trust oath in the letter.

10378. What oath did he allude to then?—I dare say it was the old trust oath he alluded to; he did not mention it in the letter; it was understood that the old trust oath would be put in the exact words then.

10379. Can the old trust oath be put?—It was not put.

10380. Can it be put?—I think it can; it is my own private opinion, but it was not put.

10381. Had there not been some intimidating paragraphs in the newspapers circulated with regard to this oath?—I do not know whether they were intimidating or not, but a copy of the trust oath was published in the different newspapers.

10382. Was that the reason that made the son write to the father to beg him to withdraw his claim?—I believe it was.

10383. Mr. David Begg allowed the claim to remain?—Yes, he was admitted on the claim.

10384. Was there any reference to the oath before the sheriff?—He was put on oath.

10385. Were you instrumental in getting up the Caithness petition; that petition with regard to the fictitious votes?—I did all I could to get it up.

10386. You went about from house to house to obtain signatures?—I went to the voters' houses; there was a petition of the non-electors; I called on several of the voters.

10387. Did you call on the voters as well Whig as Conservative?—Yes.

10388. You are a member of Mr. Traill's committee?—Yes.

10389. An active partisan on that side?—Pretty active on the liberal side.

10390. You have always taken a decided part in politics?—Yes.

10391. Always strong on the liberal side?—Very.

10392. Mr. *F. Baring*.] What was your object in getting up this petition?—The petition against the fictitious votes, do you mean?

10393. Yes?—In order to do every thing in our power to show the feeling of the country, in order that they might be done away with.

10394. What measure did you contemplate?—I did not turn my attention to any remedy for it; the only thing I conceive, in my own opinion, is to do away with them altogether; to annihilate them.

10395. To annihilate fictitious votes?—Yes.

10396. When you took so much on yourself in getting up petitions, had you no idea or plan in your mind by which fictitious votes could be distinguished from others?

others?—No, I never thought of any plan by which they could be distinguished from others; I know amongst lawyers there may be plans and methods of distinguishing them; but I am not at all conversant with these forms, and the only thing I know of would be to do away with them altogether.

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10397. Mr. *Walter Campbell*.] Are you aware at all how many votes of your class you conceive to be of a fictitious quality?—I consider all the life-renters to be so. I have a list here, and by looking at that list I can inform the Committee how many of that list are residenters.

10398. Mr. *E. Buller*.] Let us take them as life-renters, so many resident and so many non-resident; and joint proprietors, so many resident and so many non-resident?—There are a few life-rent and part proprietors in this list; that is, there are a few who had property in houses not up to the 10*l.*, and these individuals got a property in life-rent to make up the deficiency.

10399. Mr. *Walter Campbell*.] How many of them are resident of both those classes?—I will give the residenters of the life-renters [*after looking at the list*]; of the complete life-renters that are not in part property, there are 10 non-resident.

10400. How many are there in your list altogether?—Twenty-three of these life-renters.

10401. And 10 are non-resident?—Yes; but then there are the few who are partly life-renters and partly proprietors.

10402. Are they all resident?—Yes, I think so.

10403. Viscount *Stormont*.] Do you consider all these votes to be fictitious?—I consider them all not free voters.

10404. That is not an answer; do you consider all these votes to be fictitious?—I do.

10405. On what grounds?—I think they are got up for a political purpose, and there is a suspicion attached to them that they are not *bond fide* votes.

10406. What suspicion is there attached to them?—That the way they have got their qualification binds them to certain individuals, from whom they have got their qualification; binds them in a way by which they are not free to vote as they think proper; that is my own opinion, and I may say that is the general opinion in Caithness.

10407. Then do you consider that every vote is fictitious when a person is obliged to vote in the manner in which another individual would wish him?—Yes, in one sense of the word, I do.

10408. Do you know any votes of any description whatever to which that principle would not apply?—Yes, I think it does not apply to persons who have property of their own, who have purchased and paid for it properly, and under no influence whatever; I speak of the feuars with whom I am immediately acquainted in Thurso and in Castletown, and in Lybster and in Wick. All these 10*l.* feuars I consider independent and not under the influence of people, and so it shows, that many of them vote one way and many of them vote the other.

10409. May it not happen that persons having an heritable bond on one of these properties might influence a person who is in possession of the property to vote as he wished?—He certainly may.

10410. Then a feu property is not exempt from that fictitious quality which you ascribe to the life-rent votes?—I can conceive, as I have stated before, that the man may be in debt to such an extent to an individual that he may influence him, but I say in general, that I consider these votes honest and better than the other class of voters.

10411. But as the principle applies to these feu votes, would you abolish votes on feu property for that reason?—Certainly not. I think a question was put to me yesterday, whether it was not possible that a person might sell a property to an individual, and give it over in feu, and take bills for that property; I would consider that a fictitious transaction.

10412. If a person purchased a life-rent, and paid the money down for that life-rent, do you still consider that to be a fictitious qualification?—I think it is possible that a man may make a *bond fide* purchase of life-rent; still I say suspicion is attached to him; and I know many individuals who are well able to pay for these life-rents. Some individuals who have purchased these life-rents, and who are well able to pay, have said that they have made a very good investment of their money.

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10413. That

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10413. That being the case, may there not be as good a *bonâ fide* vote on a life-rent qualification as upon a qualification of any other description?—No.

10414. Why not?—Because it is always considered in the same way as it was with the old life-rent qualification in Scotland, that they were bound to follow the politics of the person who gave the life-rent. I consider in life-rent cases there is and must be an understanding that they are to abide by the politics of those who give the life-rent.

10415. Is that an ingredient in the qualification; does it follow as a matter of course that a man must vote according to the wishes of the person who grants the life-rent?—I do not say but what it is possible, and there have been cases where life-renters have voted differently from those who have given the life-rent; but in general, I say, it has always been the case that those who gave the life-rent had a call upon the people to whom they gave the life-rents.

10416. Mr. W. Campbell.] I understood that you had never considered the question of remedy?—Never.

10417. Viscount Stormont.] As you have petitioned the House of Commons, what is it that you seek for?—I forget exactly the prayer of the petition now.

10418. I do not mean the exact words of the prayer of the petition, but what are your wishes?—To do away with these fictitious votes in life-rent.

10419. Any others besides life-rents?—I do not think there are any other descriptions.

10420. Are you aware whether there are life-rent votes in England?—I have heard there are since I came up.

10421. Do you wish those to be done away with also?—I could not go into particulars.

10422. Do you wish those also to be done away with?—If they are got up in the same way as these life-rents have been got up in Scotland, I should wish them to be done away with.

Veneris, 2^o die Junii, 1837.

MEMBERS PRESENT.

Mr. W. Campbell.
Sir William Rae.

Mr. E. Buller.

THE LORD ADVOCATE IN THE CHAIR.

Mr. John Fotheringham, called in; and Examined.

Mr.
John Fotheringham.

2 June 1837.

10423. Chairman.] YOU are a writer in the town of Peebles?—Yes.

10424. How long have you been in that situation?—On my own account, for the last 10 years.

10425. Were you employed by Sir Thomas Carmichael, or Mr. Carmichael, as a political agent in that county?—By Sir Thomas.

10426. When?—On the 25th of June 1835.

10427. Have you had the general management for persons in the liberal interest for the county?—I have.

Martis, 5^o die Junii, 1837.

MEMBERS PRESENT.

Sir William Rae.
Lord Stormont.Mr. Edward Buller.
Mr. George Ferguson.

THE LORD ADVOCATE IN THE CHAIR.

Mr. John Fotheringham, called in; and Examined.

Mr.
John Fotheringham.

5 June 1837.

10428. Lord Stormont.] IN what month were you appointed agent to Mr. Carmichael?—On the 25th June 1835.

10429. What instructions did you receive upon being so appointed?—I received no particular instructions at that time, only I was instructed to canvass the county on behalf of Mr. Carmichael, who was then abroad.

10430. Did

10430. Did you canvass the county at that time?—Yes.

10431. When was the canvass closed?—It never closed, for we continued to canvass the county up to the date of the registration court, which is in the month of July, and then after that registration we commenced *de novo*.

10432. Did the result of that canvass induce you to believe that Mr. Carmichael had a pretty certain prospect of success?—I am at a loss to give an answer to that, for there were so many of the electors refused to declare themselves, that I could form no correct opinion on that point.

10433. Had you a majority of the promises of the constituencies that then existed?—I consider that we had.

10434. Did you consider that it was necessary to make votes for the purpose of increasing the influence of Mr. Carmichael in the county?—No.

10435. What induced you to do it then?—In consequence of Mr. Aitchison, of Borland, putting on his seven sons, Mr. Gordon of Hallmire four, and Mr. M'Kenzie two.

10436. Did Mr. Gordon put on his four sons?—Four sons were put on by their father's trustees.

10437. What qualification did they claim?—As joint proprietors.

10438. Were those votes created?—I conceive they were made for a political purpose.

10439. Who made them?—The trustees of their father.

10440. Was not the property left to them?—It was left to trustees, and those trustees, along with the eldest son, conveyed this property to the other brothers, and it was believed for a political purpose.

10441. What was the value of the property?—I do not know.

10442. What sort of value; about what; I do not say the exact value; state as near as you can the value?—I could not say; it was more than gave them the qualification.

10443. Mr. E. Buller.] State in some degree, though you cannot state any thing like the exact value, you could give us some idea of the value of the property; for instance, whether it is worth thousands a year or hundreds?—I should suppose that it is worth upwards of hundreds a year.

10444. But you do not suppose it to be worth 400 l. a year?—I do.

10445. Who are the Messrs. Gordons?—One of them is a writer to the signet; one a medical gentleman, a third an accountant, and the fourth, I do not think he is any profession.

10446. Then was this property left by the father of these Messrs. Gordons to trustees?—Yes.

10448. For their benefit?—I think so.

10449. And subsequently those trustees conveyed the property to the Messrs. Gordon?—Yes.

10450. The trustees under the will having the possession of the property, and the Messrs. Gordons the beneficial interest, would not the Messrs. Gordons, by the law of Scotland, having the beneficial interest, have the right to vote?—Not without a conveyance in their favour from these trustees.

10451. Lord Stormont.] Did they claim under the father's trust-deed?—I do not recollect; I rather think not.

10452. Did that trust-deed state that they were all to have an equal interest in that estate?—I do not know; I did not peruse the deed.

10453. Are you sure that that statement was not contained in that trust-deed?—I was told that the estate was made over to the sons, to increase the value of the property for a political purpose.

10454. How did that increase the value of the property?—There was a great demand for votes in the county, and it was thought it would induce both parties to come forward and give a greater price for it than otherwise.

10455. Was that the reason the four brothers claimed on that property?—I believe so.

10456. Then it was not for the advantage of the Tory side, more than to the advantage of the Whig side, that they claimed?—I believe they would have sold to either; they were supporters of Sir John Hay, the Tory member, and his agent supported and carried through their claims.

10457. You stated just now, they claimed for the purpose of enhancing the value of the property?—Yes.

10458. Therefore they did not claim for the purpose of assisting the one side

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Mr.
John Fotheringham.

5 June 1837.

Mr.
John Fotheringham.

5 June 1837.

more than the other?—They were registered by the agent for the Tories, and will support that interest.

10459. You stated that they claimed for the purpose; I am talking with regard to the purpose; they did not claim for the purpose of assisting Sir John Hay, but for the purpose of enhancing the value of the property?—It was for the purpose of enhancing the value of the property, because they were going to sell it.

10460. Did they ever state that that was their reason?—I never heard them say so. The property was for sale, and it was thought that their intention of becoming electors was for the purpose of obtaining a greater price for the property than they would otherwise have received.

10461. *Mr. E. Buller.*] What was the date of the deed which conveyed the property from the trustees to the Gordons?—I do not know.

10462. How long was it before the Registration Court the deed was granted?—I do not know.

10463. Your first knowledge of the existence of that deed was at the Registration Court?—Yes.

10464. In what year was that Registration Court, and in what month?—In the month of July 1835.

10465. Was the property at that time advertised in the public newspapers for sale?—I think it was either at or soon after that period; I think it was after the period of the registration.

10466. Either at that period or after that period the Gordons contemplated the sale of the property?—Yes.

10467. *Lord Stormont.*] The property must have been in their possession six months previous to the registration, must it not?—It must.

10468. Was there any contest expected six months previous to the registration?—I believe there was.

10469. Had Mr. Carmichael started for the county six months previous to the registration?—No.

10470. Had he announced his intention of doing so?—No, I never heard of it till my appointment in June 1835.

10472. How came there so great a demand for property to make votes, when there was no opposition?—It was after the registration of 1835 there was such a demand for property, because it was in consequence of the Aitchisons and Messrs. Gordons claiming on these fictitious votes, that induced the people to do it.

10473. Was that the reason that made property rise in value?—It was.

10474. Then how came this property to be made into votes for the purpose of enhancing its value previous to there being any opposition in the county?—These votes made the property more valuable, and consequently more likely to be purchased.

10475. Were those votes considered fictitious?—They were reported to be so; but I only speak from report.

10476. Did you consider them to be so?—I did at the time.

10477. Do you consider them now to be so?—I have no reason to change my opinion.

10478. What is your reason for considering them fictitious?—Because the property was previously under trustees, at the time of the first registration after Mr. Carmichael had started for the county.

10479. They were put on after Mr. Carmichael had started for the county?—They were.

10480. Was the property disposed of after or before Mr. Carmichael started?—It must have been disposed of before.

10481. Then it was not done in consequence of Mr. Carmichael starting for the county?—I do not see that.

10482. If it was done previous to Mr. Carmichael starting for the county, it cannot be done for the reason you have assigned?—They might have heard what I did not know.

10483. Did they hear any thing?—I cannot say.

10484. You seem already to have stated to the Committee the reason which induced those persons to make those votes?—Yes.

10485. You stated it was in consequence of Mr. Carmichael starting for the county; I ask you this question, were they not, in point of fact, made before Mr.

Mr. Carmichael started for the county?—The deed or deeds under which they claimed must have been granted previously.

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10486. Then it was not in consequence of Mr. Carmichael starting for the county?—I have no knowledge that it was, because Mr. Carmichael did not start until the month of June.

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10487. Mr. *E. Buller.*] Were the Aitchisons inrolled as joint proprietors?—As life-renters; the father conveyed certain parks of his estate of Borland to them, and they claimed under the life-rent dispositions.

10488. Was that the first instance of any life-rentals being created in the county of Peebles?—I believe so.

10489. Lord *Stormont.*] Was Mr. Carmichael's life-rent created previous to that?—He stands upon the roll previous to that period, but I do not know how.

10490. With what qualification?—I do not know.

10491. Can you look at your book?—He claims as life-rent proprietor of the lands and mill of Skirling.

10492. Mr. *E. Buller.*] What year was he inrolled?—One thousand eight hundred and thirty-four.

10493. Lord *Stormont.*] Did not Mr. Mylne also claim as a life-renter in 1824?—I do not know.

10494. Mr. *E. Buller.*] Under what qualification did the two Mackenzies claim?—The one as proprietor, and the other as life-renter.

10495. Then the general impression in the county of Peebles from these claims was, that the conservative party were making fictitious votes?—Yes, the feeling that that was the case was very general.

10496. Were any votes put on the roll of the same character by the liberal party that year?—No.

10497. And it was in the year 1836 that you became agent for Mr. Carmichael?—No, in 1835.

10498. What month?—The month of June.

10499. But no votes then were created by the liberal party previous to the registration of 1835?—No, I got my appointment in June 1835, and it was after that period that we were induced, from Mr. Aitchison's putting on his seven sons, to do so.

10500. Lord *Stormont.*] With regard to those votes which Mr. M'Kenzie, you say, created, one was in life-rent?—Yes.

10501. What year did he claim in?—In 1833.

10502. The other was a proprietor?—Yes.

10503. What was he proprietor of?—Of the lands of Ingraston.

10504. Do you call that a fictitious vote?—It was reported to be so at the time.

10505. Upon what grounds?—From its being a life-rent.

10506. One was a life-rent, the other was a property in fee?—They claim as such.

10507. Was that property in fee considered a fictitious vote?—At the time it was.

10508. For what reason?—I do not know.

10509. Did you consider it a fictitious vote?—I consider the life-rent a fictitious vote.

10510. Do you consider that vote that was for property in fee a fictitious vote?—No.

10511. What would there be in the deed to make you consider it a fictitious vote?—If it had been granted by any person in whom the fee was vested before, I would consider that it was of a fictitious nature.

10512. You consider a vote must necessarily be fictitious where it is granted by a person who retained the fee?—It depends on circumstances.

10513. Is it given away?—No.

10514. Then explain the circumstance under which you would consider it to be fictitious?—That proprietor do you mean?

10515. Either that proprietor or speaking generally?—Speaking generally, where a person has merely a nominal interest in it, such as a life-rent disposition.

10516. This is a property in fee; I am not talking of life-rent?—I would then say, where the price is not paid, but by bill.

10517. Was there a bill granted in this instance?—I am not aware of it.

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10518. Who

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10518. Who is the person?—J. Ord M'Kenzie, esq.
 10519. What relation was the disponent to the disponent?—I do not know.
 10520. Was he a son?—I do not know.
 10521. Was this a gift?—I do not know.
 10522. Then why was it considered fictitious in the county?—It was reported to be so.
 10523. For no reason whatever?—There must have been some reason, but I cannot say what it was.
 10524. Upon that same ground, every vote in the county might be reckoned fictitious?—No.
 10525. If no reasons are assigned for calling them so?—No.
 10526. What steps did you take in consequence of those votes having been made by Mr. Aitchison and Mr. M'Kenzie?—It was considered advisable to purchase property, and properties were purchased accordingly.
 10527. Was this property purchased for the purpose of making votes?—Yes.
 10528. Which was the first property that was purchased?—I do not recollect.
 10529. Were you employed in purchasing those properties?—Some of them.
 10530. Do you know the property which is called East Sands Park?—Yes.
 10531. When was that purchased?—I do not know.
 10532. Had you any thing to do with the purchase of it?—No; I infeoffed the parties in the month of January 1836; the deeds were put into my hands, and I infeoffed them, and returned the infeoffment with the docket.
 10533. There were several life-rents made upon that property?—Yes, six.
 10534. Were you the agent employed by Mr. Carmichael to negotiate with those life-renters for the purchase of their life-rents at Sands Park?—No.
 10535. What part did you take in the transaction?—I only infeoffed the parties.
 10536. Do you know whether those life-rents were paid over in cash?—I believe they were.
 10537. Do you know that they were?—I think so.
 10538. Did that cash come through your hands?—No; I saw the state of the cash paid in the hands of the cashier of Sir James Gibson Craig.
 10539. What was his name?—Mr. Cormack.
 10540. Did he state in his evidence that those life-rents were paid over?—He was not examined, although he attended at the Registration Court for the purpose.
 10541. What proportion did the sum that was paid in cash bear to that which was paid in bills?—I do not know; it did not come through my hands.
 10542. Were you engaged in the purchase of any of those large properties from which life-rents were made?—No.
 10543. The land of Kilbucho?—I was not engaged in the purchase of the lands of Kilbucho.
 10544. Were you engaged in the negotiations with the life-renters that were inrolled upon the property of Kilbucho?—No, I merely infeoffed them.
 10545. Do you know whether they paid in cash or by bill?—I believe, with one or two exceptions, they all paid in cash.
 10546. Do you know that, and from whom?—From my co-agent, the Edinburgh agent, who negotiated the business.
 10547. Who is that?—Mr. Rutherford.
 10548. Were you employed as agent in the purchase of the houses and lands in the Bridge End, in the parish of Newlands?—No.
 10549. Do you know a person of the name of Thomas Borrowman?—Yes.
 10550. He had property at the Old Bridge of Peebles formerly?—Yes.
 10551. Did he acquire any additional subjects in December 1835 or January 1836?—Yes.
 10552. From whom did he purchase them?—The property he had yielded about 8*l.* 10*s.* per annum, and he was anxious to become an elector; he called upon me, and asked me to purchase a small property to make up the additional value; and I bought a property, and told him I had done so, and he agreed to become the purchaser.
 10553. Did you pay for that property?—Yes.
 10554. Did Thomas Borrowman repay you?—No, the price was 35*l.*; and he said it being inconvenient for him to pay it, I advanced him the money.
 10555. Did

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10555. Did you advance that from your own private resources?—No.
10556. Or from any fund?—I applied to Mr. Carmichael, and it was sent through Sir J. Gibson Craig's cashier, Mr. Cormack.
10557. Was there an heritable bond taken upon this subject?—No; the property was so small, that I could not advise such a thing; but I took his bill at one day's date.
10558. Is that the only security you have?—That is all the security that I have.
10559. Is he infest upon this property?—No, he is infeoffed upon his original property; but he is equally proprietor or owner of the one as of the other.
10560. I only asked whether he was infest?—He is not.
10561. Is there any burden upon the other property?—I am not aware of any.
10562. It is perfectly clear?—I think so.
10563. Had you any instructions from Sir Thomas Carmichael, or Mr. Carmichael, to the effect of purchasing property of this description, and advancing money to persons who were in want, to purchase property?—There was a meeting or two with Mr. Carmichael, not with Sir Thomas Carmichael, in regard to it; and my instructions flowed from him and the Edinburgh agent.
10564. Who was that?—Mr. Rutherford.
10565. What instructions did you receive from him?—I was told that any person having property, or quite responsible for the amount to make up the votes, that I was at liberty to advance money to them.
10566. To any amount?—No; I had always to consult before doing it.
10567. Did he give you any authority to advance this money to Borrowman?—On purchasing the property, I communicated with Mr. Rutherford, who paid the price, being 35*l*.
10568. Mr. *E. Buller*.] You were acting under general directions, and not under special directions as to this peculiar property?—Yes.
10569. Lord *Stormont*.] Are you acquainted with Robert Wilson?—Yes.
10570. Did he acquire property in Peebles in December 1835 or January 1836?—In January 1836.
10571. From whom did he purchase that property?—From a Mr. Scott.
10572. What price did he pay for it?—Two hundred and twenty pounds.
10573. Were you the agent employed in that transaction?—Yes.
10574. Did he pay for that himself?—No; he asked me to advance 200 *l*., which I did, and I afterwards received the amount from Mr. Cormack.
10575. Was this under your general instructions?—Yes.
10576. Did he give you a bill?—No; I was desired to take a bond over the property; but he has always put me off with the assurance that his father would come forward and pay the money; I even did not take his acceptance.
10577. What description of bond were you desired to take?—An heritable bond, or a bond and disposition in security.
10578. Is he infest in this property?—No, he is not infest; he must be infest before he can grant a bond.
10579. Have you any security for that 200?—None.
10580. *Chairman*.] You say you trusted to get a bond?—Yes; I was desired to take a bond from him.
10581. You delayed taking it?—Yes.
10582. Did you delay that from thinking his credit good?—Yes, and from the assurance that the money would be paid.
10583. And you rely on that assurance being fulfilled?—Yes.
10584. Have you good reason for doing so?—Yes; he is in good business.
10585. Lord *Stormont*.] Did you not state he always put you off?—With the assurance that his father would advance the money, rather than incur the expense of a bond; and as he was quite responsible, I did not run any risk, and Mr. Carmichael did not.
10586. Is he a man in good circumstances?—Yes.
10587. Do you know of a person of the name of John Corsare Walker?—Yes.
10588. Did he purchase some property in January 1836?—Yes.
10589. Where was it?—In the town of Peebles.
10590. What price did he pay for it?—Three hundred and thirty pounds.
10591. Did he pay for this himself, or did he borrow the money for the purpose of paying it?—I paid the price, 330 *l*., and he returned me 180 *l*.
10592. That is, 150 *l*. you advanced?—Yes.

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10593. When did he pay you the 180 l. ?—At the completion of the transaction, or a few days afterwards.
10594. Did he pay the whole 180 l. at that time ?—Yes.
10595. Did you take any bill for the 150 l. ?—I did ; I took his acceptance for the 330 l., and marked the payment of the 180 l. on the back of the bill.
10596. What time elapsed between the time when he granted the bill and the time when he paid the 180 l. ?—A few days.
10597. Is he infest in that property ?—No.
10598. Is there any burden upon that property ?—None.
10599. Did Mr. Cormack repay you the 150 l., or from whom did you get it ?—Mr. Cormack.
10600. Did John Corsare Walker purchase this property himself, or did you purchase it for him ?—I purchased it for him.
10601. Under special instructions from him ?—Yes.
10602. Did you know the property was for sale before the purchase ?—Yes.
10603. Did you recommend the property to him ?—He had been looking at it ; it belonged to a Mr. Lardlaw, and was sold by public roup, and purchased by Mr. Wilkie, from whom I re-purchased it for Mr. Walker.
10604. Is Mr. Walker a person in good circumstances ?—Yes, he has got a very good business.
10605. Do you know James Thorburn ?—Yes.
10606. Did he purchase a property in Peebles in January 1836 ?—Provost Thorburn purchased it for him.
10607. Were you engaged in that transaction ?—Yes.
10608. What sum of money did he pay for this ?—One hundred and thirty pounds.
10609. Did he pay for that himself ?—No.
10610. Who paid it ?—I advanced the money.
10611. The whole of it ?—Yes.
10612. Did he give you a bill for the amount ?—Yes.
10613. Were there any conditions attached to that purchase ?—None.
10614. Did Mr. Cormack repay you the 130 l. ?—Yes.
10615. Has he in his possession any letter promising to take back the property whenever he wishes to dispose of it ?—None.
10616. Do you know of any such letter having passed ?—No.
10617. No engagement was made by you to that effect ?—None.
10618. Or any other person ?—No.
10619. Is he in good circumstances ?—Yes.
10620. But it was not convenient to him to pay the money ?—No.
10621. Has he repaid any of it ?—No ; he has paid part of the interest, but no part of the principal.
10622. What interest did these bills bear ?—Four per cent.
10623. All of them ?—Yes.
10624. Is the interest pretty regularly paid ?—Yes, all has been paid punctually, except in one instance.
10625. Which is that ?—Thomas Borrowman.
10626. Has he paid any interest ?—No.
10627. Has any interest been demanded of him ?—Yes.
10628. On what ground has he refused to pay it ?—Because he had not got his rents ; but he promised to pay it as soon as possible.
10629. Are the rents generally about the same sum as the money advanced ?—They are in most cases much larger.
10630. What rent does Mr. Borrowman receive for this additional subject which he purchased ?—I think it is 3 l. 10 s., to the best of my recollection.
10631. Do you collect the rents of these properties ?—No.
10632. Any of them ?—No.
10633. Do you know William Hunter ?—Yes.
10634. Did he acquire property in Peebles in December 1835, or January 1836 ?—About September or October 1835.
10635. What price did he pay for it ?—I forget ; he paid the money down, and I was merely employed to write out the disposition.
10636. Were you the agent employed ?—Yes.
10637. Did he pay the money himself, or did he borrow the money ?—I believe he borrowed 100 l. of it.

10638. Did

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10638. Did he borrow the 100*l.* from you?—No.
 10639. Was it a private transaction?—Yes.
 10640. Was that other individual in any way connected with Sir Thomas or Mr. Carmichael?—No.
 10641. At the time he made the purchase, did he try to raise the cash by offering a bill to the sellers of the property?—No.
 10642. Did he not offer them a bill with the name of Provost Thorburn and George Veitch as cautioners?—No, not to my knowledge.
 10643. Could such a circumstance have taken place without your knowledge?—No.
 10644. Do you know whether any bill of his was refused?—Never to my knowledge.
 10645. Do you know James Veitch?—Yes.
 10646. Did he acquire property in December 1835?—Yes.
 10647. What did he give for it?—Fifty pounds.
 10648. Was this paid for in his own money?—No.
 10649. Did you lend the money?—Yes.
 10650. The whole of it?—Yes.
 10651. Did you take a bill for it?—Yes.
 10652. Have you been repaid that money?—Yes.
 10653. By whom?—I received it from Mr. Cormack.
 10654. Is Mr. Veitch infest in this property?—No.
 10655. Is he in good circumstances?—Yes.
 10656. Has interest been paid on this loan?—Yes.
 10657. Regularly?—Yes.
 10658. Do you collect the rents?—No.
 10659. Are you acquainted with William Wallace?—Yes.
 10660. Did he purchase a property in the end of 1835 or the beginning of 1836?—Provost Thorburn purchased it for him.
 10661. What was the property?—It was a tannery.
 10662. Did he purchase it singly or jointly with another person?—Jointly with another person.
 10663. Who was the other person for whom he purchased it?—Mr. Thomas Gentle.
 10664. Were you employed as agent in that transaction?—Yes.
 10665. What sum was paid for the whole property?—Six hundred pounds.
 10666. Did Mr. Wallace and Mr. Gentle pay for themselves, or did they borrow the money to pay it?—Mr. Gentle paid his part, being 280*l.*, himself.
 10667. Who paid the other 20*l.*?—Mr. Wallace's proportion was 320*l.*
 10668. Did Mr. Wallace pay it himself?—No.
 10669. Did he borrow the money?—Three hundred pounds.
 10670. Did he pay the 20*l.*?—Yes.
 10671. From whom did he borrow the 300 *l.*?—I lent it to him.
 10672. Have you been repaid?—Yes.
 10673. By whom?—Mr. Cormack.
 10674. Have you taken a bill for the amount?—Yes, and I have to take a bond and disposition in security.
 10675. When did you take the bill?—Immediately on my advancing the money.
 10676. When did you receive instructions to take the disposition?—Immediately or soon after the money was remitted.
 10677. Who gave you those instructions?—I wrote to my co-agent, Mr. Rutherford, and he communicated to Mr. Cormack in regard to all the people to whom money had been lent, and Mr. Wallace was one of the individuals from whom I was desired to take a bond.
 10678. Did they consider that his bill was not a sufficient security?—I considered his bill perfectly good.
 10679. What were their reasons for giving you instructions to take a bond after you had taken a bill?—As an additional security.
 10680. Did they not consider the prior security sufficient?—That was left to me.
 10681. They preferred having an additional security?—I do not know whether they preferred it, but I was instructed to take it.
 10682. Have you got it?—No.
 10683. For what reason?—For want of time.

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10684. Have you applied for it?—I have got the deeds in my possession for the purpose.

10685. Have you applied to William Wallace to grant the bond?—Yes, and he handed me the papers for the purpose.

10686. At the time of the purchase?—Yes.

10687. Is he infest in the property?—No.

10688. Then till he is infest you can take no steps?—No.

10689. Was there any other name attached to this bill besides his?—None.

10690. Were there any other names to the bills which you have mentioned previously?—No.

10691. In what circumstances is William Wallace?—In good circumstances, to the best of my knowledge.

10692. Is he a master tanner?—Yes.

10693. How long has he been a master tanner?—For the last four or five years.

10694. As master tanner, or as journeyman?—As master tanner.

10695. Had he another tannery before this?—He was tenant of the same property previously.

10696. Had he any tannery in Peebles?—No.

10697. You stated he had been a master tanner four or five years; where was that?—In Peebles.

10698. Where did he carry on this business?—In the premises which he purchased.

10699. What rent did he pay?—I do not know.

10700. Is his business considered a good business?—Yes, he is the only tanner in Peebles.

10701. Is Thomas Gentle a tanner?—A nurseryman.

10702. Has he any share in the tannery?—No.

10703. What is his part?—Several houses, and a large garden.

10704. Are you acquainted with Mr. Thomas Brunton?—Yes.

10705. Did he acquire property in December 1835, or January 1836?—In December 1835.

10706. Did he purchase that property?—Yes.

10707. From whom?—His father-in-law, Mr. Calderwood.

10708. What sum did he pay for that property?—I do not recollect; I think it was 170*l.*, to the best of my knowledge.

10709. Were you the agent in the transaction?—Yes, I wrote out the disposition.

10710. Did he pay for that himself?—He paid the greater part of it, and there was a previous bond by Mr. Calderwood, which was allowed to remain on the property.

10711. What was the amount of the bond?—One hundred pounds, to the best of my knowledge.

10712. Did he borrow any money to pay this?—No.

10713. You lent him no money?—No.

10714. Did he pay the difference between the bond and the sum himself?—Yes.

10715. Did Mr. Patrick Shaw, an advocate, buy half of the same subjects at the same time?—Yes.

10716. What price was paid for it?—I do not recollect, between 180*l.* and 200*l.*

10717. Was there a bond on that property?—There was.

10718. To what amount?—I do not recollect.

10719. Then Mr. Shaw paid the amount only between the price and the amount of the bond?—The transaction was completed by Mr. Rutherford, and further than receiving 36*l.* from Mr. Rutherford to pay Mr. Calderwood, I do not know anything of the matter.

10720. Did Mr. Rutherford receive this 36*l.* from Mr. Shaw?—I do not know; I believe so.

10721. Was it money lent by Mr. Carmichael?—I do not think it was; it was remitted me by Mr. Rutherford.

10722. Are you acquainted with any circumstances connected with this property?—No; I draw the rents of Mr. Shaw's property.

10723. Do you draw the rents of the whole property?—No; of Mr. Shaw's part only.

10724. Do

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10724. Do you pay the interest for Mr. Shaw?—He authorized me to do so.

10725. The interest upon the bond?—Yes.

10726. What is the interest upon the bond?—I do not recollect.

10727. You never have yet paid it?—No.

10728. What were you to do with the difference between the difference of the bond and the rent?—Pay it to Mr. Shaw; and I received a letter demanding a state of his rents, and for payment of the balance.

10729. When was this?—About the month of November last.

10730. Were you to pay any interest to Mr. Rutherford?—No.

10731. Do you know the property that was acquired by Robert Ferguson in December 1835 or January 1836?—Yes.

10732. From whom did he acquire that property?—From his father.

10733. Did he purchase it from his father?—No, he is an only son, and it was conveyed him for love, favour and affection.

10734. No money passed?—None.

10735. Do you know Alexander Scott?—Yes.

10736. Did he buy any property in December 1835 or January 1836?—About September 1835 he bought a property.

10737. In Peebles?—Yes.

10738. What price did he pay for it?—I cannot charge my memory with the amount at this present moment.

10739. Were you the agent in the transaction?—Yes.

10740. State, as nearly as you can, the price he paid for it?—From 100*l.* to 140*l.*

10741. Did he pay for that himself?—Yes.

10742. Was no part of the money borrowed?—None.

10743. Are you sure of that?—Quite sure.

10744. What is he?—He is a master tailor.

10745. Mr. *Ferguson*.] Was he admitted on the registry on property of so low a value as 140*l.*?—He had property previous to that, worth about 9*l.* per annum.

10746. Does R. Ferguson receive the rents of the property that was conveyed to him by his father?—Yes.

10747. He has become the *bonâ fide* proprietor?—Yes.

10748. And exercises all the rights?—Yes.

10749. It was conveyed for a political purpose?—I believe so.

10750. Lord *Stormont*.] Do you know a person of the name of John Dickson?—Yes.

10751. Did he purchase a property in Peebles in the month of December 1835 or January 1836?—Yes; in December 1835 he had conveyed to him by his son, for love, favour and affection, a property worth about 9*l.* per annum; and in order to make up a vote, the father authorized me to purchase a small property, so that he might become an elector.

10752. Did the son get it from the father, or the father from the son?—The father from the son.

10753. What sum did you pay?—Fifty-three pounds for the property I bought for him.

10754. You advanced the money?—Yes.

10755. Have you been repaid that sum?—No, I took his bill for the amount.

10757. Have you been repaid by Mr. Cormack?—Yes.

10758. Is he infest in that property?—Yes.

10759. Have you any instructions to take a disposition upon it?—No.

10760. Is there one name or more to this bill?—Just one.

10761. Was his claim admitted in 1836?—No.

10762. What were the grounds of the rejection of that claim?—The interest upon this bill of 53*l.* did not become due until the month of August, and he was unwilling to receive the rent from the tenant till that time; that the tenant met Dickson one day, and asked him to take it, and he said, "No, I wish it to remain in your hands till such time as my interest becomes due, and then I will take it from you;" Mr. Girdwood, an acquaintance, who happened to be passing at the time, stopped and heard the conversation, and the rent was put into his hands, and in the month of August it was paid to Dickson.

10763. Did the sheriff consider that the property belonged to you, and not

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to John Dickson, and was that the reason that the claim was rejected?—The claim was rejected from Dickson's refusing to receive the rents at the time.

10764. Did that induce the sheriff to believe that the property was not his?—I believe so.

10765. Did John Dickson conceive that the property was not his, inasmuch as he had not paid the interest on the bill?—No.

10766. Upon what ground would he not receive the rent?—He wished the tenant to retain it till such time as the interest of the money became due.

10767. Did he conceive that the rent ought to have been paid to you?—No.

10768. To whom did he conceive it ought to have been paid?—To himself.

10769. Then why did he not take it?—For the reason already mentioned, that he wished him to retain it till such time as the interest on his bill became due.

10770. Have you this man's title-deeds in your possession?—Yes, I got them for the purpose of completing his title by infestment.

10771. Are they in your possession?—Yes, I mean the warrants for infesting him.

10772. Are the title-deeds in your possession?—With these exceptions, they are not in my possession; and I retain the papers till such time as I am paid my fees for the infestment.

10773. Have you been paid?—No, that is the reason of my retaining them.

10774. What is the reason that induced you to take infestment?—To obviate the objection stated by the sheriff at last registration.

10775. What is the expense of the infestment of that property?—About 4*l*.

10776. Upon whom will that expense fall?—Upon Dickson.

10777. There is no agreement to pay for it by any body else?—No.

10778. Have you put it to his account?—Yes.

10779. Do you know Alexander Grieve?—Yes.

10780. Was this man enrolled in 1836?—Yes.

10781. Had his claim been rejected in 1835?—It was.

10782. For what reason?—For want of value.

10783. Had he made any addition in the meanwhile to his house?—Yes.

10784. Did the house become of sufficient value in 1836?—It was reported by tradesmen to be of sufficient value, and was admitted by the sheriff.

10785. Was any money advanced to him for the purpose of finishing his house?—None.

10786. Had any money been advanced to him in the progress of the building of his house?—I am not aware of it.

10787. Is that house in Mr. Grieve's possession now?—No.

10788. Who has purchased it?—Sir John Hay's land steward.

10789. What sum was paid for it?—I do not recollect; about 320*l*.

10790. Had you any loan on the property?—I advanced Grieve out of my own pocket about 20*l*.

10791. When was that sum advanced?—Towards the end of the year 1836.

10792. I asked you just now whether there had been any money advanced; you said, none?—I thought you meant by Mr. Carmichael; it was a transaction of my own.

10793. Did Mr. Robertson purchase this house, or who is the steward of Sir John Hay?—Mr. Buchan.

10794. Was Mr. Robertson employed as agent in that transaction?—No; it was Mr. Douglas, Sir John Hay's country agent.

10795. Did they ever apply to you for delivery of the title-deeds?—Mr. Douglas did.

10796. Did you decline to produce them until the advances that you had made were paid?—Yes.

10797. Has it been usual for you in these transactions to become the custodia of the title-deeds?—In that particular case only.

10798. In the other cases you have mentioned in which you have lent money, had it become your custom to become the custodia of the title-deeds?—No; they were all handed over to the purchasers at the time, and were got back for the purpose of producing them at the Registration Court.

10799. Are there any other cases where you hold these title-deeds for the party who makes the advance of money?—No.

10800. If

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10800. If these nominal purchasers were to ask you for the title-deeds in all cases, would you give them up without repayment of the advances?—I would.

10801. Then how came you, in the case of Grieve, to refuse, when the party sold his house, to deliver up the title-deeds till the advances made to Grieve were paid?—Because they were hypothecated for payment of my account completing his title.

10802. Why should that prevent you giving up the title-deeds?—That was my only security for completing his title.

10803. Had you no bill granted to you?—None; it is quite usual for an agent to retain the title-deeds of an employer till such time as he is paid the expenses attending them.

10804. Are there any other cases, besides those you have mentioned, in which advances of money have been made by you as agent for Mr. Carmichael?—There is another case, that of Adam Walker.

10805. Will you state that case?—He was proprietor of a small property in the town of Peebles, and he wished to have another property, so as to become an elector; and he instructed some one (I think Provost Thorburn) to buy a property for him; he did so, and the purchase price was 130*l*.

10806. Did you advance the money?—Yes.

10807. The whole of it?—Yes.

10808. Did you take any bill?—Yes, from him and his father.

10809. What is the Christian name of his father?—William.

10810. Is he infest on this property?—No.

10811. Have you had any instructions from Mr. Rutherford in this case to demand a bond and disposition as security?—No, his father is perfectly good, and in circumstances to pay the money whenever I choose to demand it.

10812. Was this 130*l*. for Mr. Carmichael?—Yes.

10813. And repaid by Mr. Cormack?—Yes.

10814. Are there any other cases?—I paid other 35*l*. to John Corsare Walker, which he applied for; and upon consulting Mr. Rutherford, I was desired to advance it.

10815. *Chairman.*] For what purpose?—I do not know.

10816. *Lord Stormont.*] When did John Corsare Walker apply for this?—About the month of June or July, or perhaps further, in 1836.

10817. *Chairman.*] You do not know for what purpose?—No.

10818. *Lord Stormont.*] Was it charged to the political account?—Yes; I cannot say what it was for; I do not know that it was to buy property.

10819. Have you charged it to the account of Mr. Carmichael?—Yes.

10820. Did John Corsare Walker apply to you, in the first instance, for it?—Yes.

10821. Did he state any ground for that application?—I do not recollect just now what he stated, but he mentioned that by the payment of the 180*l*. he had become rather short of money, and he wished to have 35*l*.; and I mentioned it to Mr. Rutherford, and Mr. Rutherford desired me to give it to him, which I did.

10822. Did you take a bill?—No, I did not.

10823. Have you any security for it?—I have just an acknowledgment for it, but no bill, and he has paid the interest on the 150*l*. and 35*l*.

10824. Are you in possession of his title-deeds?—Yes.

10825. *Chairman.*] For what purpose?—For the purpose of preparing a bond and disposition in security.

10826. *Lord Stormont.*] Is not the possession of the title-deeds a security to you for every advance of money you have made?—No.

10827. If he sold that property, would you give up the title-deeds till your advances were repaid?—I would.

10828. Would you not decline to do so in the same manner as you did in the case of Grieve?—The case of Grieve was a private advance of my own.

10829. Would you not do it?—No.

10830. What difference is there between the one and the other?—I had no hypothec over the title-deeds belonging to Walker; while in the case of Grieve, I had, for my expenses of completing his title.

10831. There were advances made beyond the expense of the completion of title?—Yes, out of my own private pocket.

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10832. It

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10832. It makes no difference whether it was out of your own private pocket, or supplied by another person, as to the security?—The agent could have demanded them, which I could not have done on that account; but for the hypothec for completing his title, I could have retained them, seeing he had sold his property. I considered when I was kind enough to advance him 30 l., or 35 l., I should be repaid; of course he was willing, and I did so of myself.

10833. You had not an hypothec on the money you advanced?—No.

10834. You declined to give up the title-deeds till the whole was paid?—My answer to Mr. Douglas was a general one; I said, so soon as my expenses and advances were paid, I would deliver over the title-deeds.

10835. If the expenses had been so repaid, and not the advances, could you have retained the title-deeds?—No.

10836. Are there any other cases in which money was advanced?—No.

10837. Are there any cases of life-rents where money was advanced?—None.

10838. Are there any cases of life-rents where cash was paid in the first instance, and that that cash has been repaid, and bills granted in the place of cash?—I am not aware of any instance.

10839. Have you been engaged in the purchase of any property where money has been advanced by Mr. Carmichael or his agents, or by any of his friends?—Yes.

10840. Besides those which you have stated?—Yes.

10841. Will you state them?—I purchased a property in Innerleithen.

Jovis, 8^o die Junii, 1837.

MEMBERS PRESENT.

Mr. Divett.
Lord Viscount Stormont.
Sir William Rae.

Mr. Dunlop.
Mr. Edward Buller.

THE LORD ADVOCATE IN THE CHAIR.

James Traill, Esq., called in; and Examined.

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10842. *Chairman.*] YOU are a considerable proprietor in the county of Caithness?—Moderately so.

10843. You have a good deal of the estate under your own management, have you not?—A large portion of it; probably near 2,000 acres.

10844. And you have been many years employed in improving it?—Yes, a great many.

10845. You were formerly sheriff for the county of Caithness, were you not?—Yes, for half a century; for fifty-one years.

10846. When did you resign that office?—In 1833 or 1834.

10847. On account of age?—On account of age.

10848. Have you ever interfered at all with the politics of the county?—Never; I thought it not consistent with the duties of my office as sheriff, and on resigning that office I was too far advanced in life to commence a new career.

10849. Have you granted feus on your property at Castletown?—Yes, I have.

10850. How long have you had that in view?—More than 20 years; I cannot be precise as to the time. The first houses were built for leaseholders, and when I found the village increasing and beginning to be of some consideration, I then formed the idea of feuing it.

10851. When you formed the idea of feuing it, had you any political object in view?—Not the slightest.

10852. Were any of those feus granted before the Reform Act was passed?—I think not. The first were granted, I think, in 1833 or 1834; I am not quite positive, but I think it must have been the end of 1833. There are two classes of feus; in one class the grounds only were feued, under the consideration that the feuars were to build their own houses; and in the other class the buildings had been erected by myself.

10853. And the ground was feued for the full value?—To its full value.

10854. As it stood?—Yes; the ground in the one case, and the ground with the houses erected on it in the other. The houses were sold for a specific sum of money, and the ground was feued at the same rate as the other grounds.

10855. Do

10855. Do you consider that a profitable use of your property?—Certainly; the feu rents are 8*l.* an acre; the former rent paid for the grounds would be about 25*s.* James Traill, Esq.
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10856. Then if you are understood rightly, you get about 8*l.* an acre for ground that formerly yielded about 25*s.*?—Yes, or 30*s.* at the most.

10857. And you also received the value of the houses?—I appointed two persons when the proposal was made for feuing, a mason and a house carpenter, to value the houses, and to report to me what the value was, and upon that valuation I entered into treaty with the feuars.

10858. Some of those feus have been granted since 1832?—Yes, in 1836.

10859. Were the feus granted in 1836, granted on the same terms as those which had been granted previously?—On the same terms as to the ground rent. There was a quarter of an acre of ground granted to each house, and for that 2*l.* was paid, and they paid the value of the house.

10860. Were any of those feus granted in 1836 fictitious transactions?—Not one; they were all of them real rights of property granted to the feuars and their heirs.

10861. Were they all granted for a full and fair price without any favour?—I obtained for all of them, I believe, with one or two exceptions, the price these valuers had set upon them.

10862. You say that in some instances you did not receive the full amount?—In one instance I recollect, after the valuation had been sent to me, the person who was to have the feu stated that it was in bad order, and that he would require to take off the roof immediately and put another slate roof on, and then I made some reduction, but in almost every other instance I got the full sum.

10863. When you made that deduction, was any political motive operating on your mind?—Not the slightest.

10864. Were the persons receiving these feus understood to be under any obligation to vote in any particular way?—No; on the contrary, they were to exercise their own judgments altogether. I was not perfectly well when the last transaction took place, and I directed the writer who had prepared the conveyances to intimate to the parties that if any means had been induced to secure their votes, it was without my concurrence and authority, and that I released them from any obligation arising under such circumstances, and that they were to consider themselves at liberty to exercise their privileges according to their own discretion and judgment.

10865. Would you consider it a correct transaction to give a colourable title to any party or property, for the purpose of creating votes?—Certainly not.

10866. If any such transaction had taken place in your property, and come to your knowledge, would you have permitted it to go on?—Certainly not.

10867. How were the prices of the feu-duties settled?—There was a partial payment made in money, and bills were taken at 12 months' date for the balance, together with a year's interest upon it. I can elucidate that a little, by a memorandum drawn up by my clerk when I left Caithness. I delivered over those bills to him for the purpose of receiving payment from any of the parties who were ready to make payment, and he made up an inventory, which he gave me. These are the sums that were then due:—

[The Witness produced an Inventory, which was put in, as follows:]

INVENTORY of BILLS handed T. Hewison by Mr. Traill, 17th November 1836.

Bill, Donald Swanson, Castletown, of date 30th January 1836,	£.	s.	d.
at 12 months - - - - -	47	14	9
Bill, John Spence, Merchant, Dunnet, date as above - -	106	3	7½
Bill, George Johnston, Heathfield, date as above - -	52	15	3
Bill, William Sinclair, Merchant, and Donald Murray, Shoemaker, Castletown, and Mr. James Purves, Thurdistoft - - - - -	103	13	9
Bill, William Lumsden, Blacksmith, and James Bruce, Rope-maker, Castletown - - - - -	79	16	-
Bill, Mr. James Purves, Thurdistoft, and Messrs. Purves and Brown, Merchants, Wick - - - - -	145	-	-
Bill, John Murray, junior, in Greenland - - - - -	48	11	3
Bill, William Steven, Farmer, Reaster - - - - -	83	4	3
Bill, Donald Murray, Shoemaker, Castletown - - - - -	17	4	4
£.	684	3	2½

The date of the above Bills is 30th January 1836, at 12 months.

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In short, they did not become due till the 13th of January last, which was after I had left the country.

10868. Is that an usual mode of settling for feus?—Yes, when you are satisfied with the security offered. I should not have hesitated to wait for ten years for the money. They are all good securities; I know the individuals quite well, and they are all perfectly good securities.

10869. Are you aware of any feus having been disposed of in the county of Caithness on better terms than those, considering the situation of the ground?—I do not know. I have heard that feus have been given by Mr. Sinclair, of Lybster, at 10*l.* per acre; but the situation is far more advantageous, being in the vicinity of the best fishing on the coast.

10870. Do you know whether those bills have since been paid?—My accounts are only settled once a year, and I have no direct information on the subject.

10871. From such reports as have reached you, do you believe that they have been paid in whole, or in part?—I have seen a letter from my factor in the country, which states that they are nearly paid up, partly in money and partly in accounts, for work or articles furnished to me; the letter states that there is only about 50*l.* due.

10872. Is that out of the whole?—Out of the whole.

10873. Out of the whole 684*l.*?—Yes.

10874. The whole 684*l.*, with the exception of somewhere about 50*l.*, has been paid either in money or by accounts?—Yes, according to my information.

10875. But you cannot know that precisely till you go to Scotland?—No.

10876. You have been resident for some time in the neighbourhood of London?—Since December last.

10877. That is, since the period to which you have referred?—Yes.

10878. In the list you have given, there is a bill of 145*l.* by Mr. James Purves?—Yes.

10879. Mr. Purves is your factor?—Yes.

10880. How long has he been your factor?—Since 1831, I think.

10881. Have you considered him a regular person in fulfilling his engagements?—He does not keep any pecuniary accounts. He keeps a journal or day-book, which is revised occasionally by my clerk, and the particulars entered in my books.

10882. Have you had any doubt of his solvency during the time he has been employed by you?—Not the slightest.

10883. Had you any doubt with regard to the bill being paid when it was granted?—Not the slightest. Messrs. Purves and Brown, the guaranties to the bill, are merchants of great respectability in Wick, and Mr. James Purves is himself a man in good credit, so far as I know.

10884. Do you believe there is any person in the county who would have hesitated to take that bill?—Certainly not; I am quite sure it would have been taken by either of the banks.

10885. Would it surprise you very much to hear that any person had expressed a doubt as to the payment of that bill?—Yes; I should think no one could have expressed a doubt that saw the names attached to it.

10886. Have you ever bought any property with a view of making votes?—Never.

10887. Have you, or any future owner of the estate, any power of interfering with those feus?—Not at all.

10888. Are the titles to the property perfectly unimpeachable, whatever might be done by you or any of your successors?—The title is perfectly good against all parties.

10889. Do you know whether there are any burdens upon the grounds and houses?—No, I do not.

10890. Were there any when you granted them?—Not any.

10891. Then if there are any burdens now, they must have been created since you granted the conveyances?—Certainly.

10892. Is your estate in Caithness in a condition in which you could make a large number of life-rents upon it, if you were so disposed?—I dare say I might.

10893. It is unentailed?—Unentailed.

10894. And at your free disposal?—And at my free disposal.

10895. Have you ever made any life-rents upon it?—Never.

10896. Have you ever been solicited by your sons to do so?—Never.

10897. Lord

10897. Lord Viscount *Stormont*.] You stated that you granted these feus in 1836?—Yes. *James Traill, Esq.*

10898. At what time did you form the intention of feuing out your land?—Twenty years before, at least. 8 June 1837.

10899. But with regard to these new feus that are granted?—The houses have been built 20, 30 or 40 years ago, and let to tenants; when the houses multiplied considerably, it then became my object to feu it out. I cannot be precise to the particular day that I came to that resolution; it arose from the increase of population.

10900. Had the parties applied to you to take the feus, or did you apply to them?—Neither the one nor the other. I had no concern in the negotiation whatever, except ultimately to fix the terms at which the property was to be disposed of.

10901. Who conducted the negotiation on your part?—I believe Mr. Purves, the factor, but whether the movement commenced with him or with the other party, I have no means of knowing; that is, whether he solicited or asked them to make the purchases, or whether they asked him to be allowed to make them, I do not know.

10902. When did Mr. Purves first communicate to you that these parties were about to take the feus?—A very few days before they were granted.

10903. On what day were they granted?—They must have been granted in January 1836.

10904. It was a short time before that, that Mr. Purves communicated to you the wishes of these parties to feu?—Yes.

10905. Did he inform you that offers had been made for these feus?—I think not. I have already mentioned that the manner in which the business was conducted was, that when I was informed that those parties wished to take feus, I appointed two persons to value the houses and to place the valuation in my hands; that I have already stated in my evidence.

10906. Were feus granted on all houses for which offers had been made?—I think so.

10907. Without exception?—I think so.

10908. Were any of those houses purchased and paid for entirely in cash?—Some of the purchasers had money invested in my hands, more than equal to the amount of their purchase: I was their debtor. The money was placed in my hands on interest, more than adequate to the value of their purchase money.

10909. You had a sort of running account with them?—No; it was money deposited on interest; they were receiving the interest from me.

10910. Was that money transferred to your account?—Yes; the price was paid out of their own money in my hands.

10911. All these bills are at 12 months' date; was that the only security you took for the money that was not paid?—Yes.

10912. Were there no heritable bonds given?—No.

10913. Do you know in whose custody the title-deeds of these properties are?—I do not.

10914. Do you know whether they were given back to the parties at the time by Mr. Purves?—I think they were delivered to the parties by Mr. Manson, the writer who was employed on the occasion.

10915. You are not aware what has become of them since?—Not at all.

10916. Are most of these persons in your employment, or are they tradesmen?—They are artificers; they are not in my employment; they are in general employment; masons, carpenters and farmers; three or four of them are farmers.

10917. *Chairman*.] You stated they were not exclusively in your employment?—No; they were professional persons, who served any body who wanted them; the artificers were of that description.

10918. Lord Viscount *Stormont*.] William Steven was a farmer; does he reside in that house?—No, he does not; he has an extensive farm.

10919. Is he a tenant of yours?—He is, and two or three more of them are in the same situation.

10920. Had he rented that house previously to purchasing the feu from you?—No, he lived upon his farm, which he lives on still.

10921. What does he do with that house?—He lets his feu.

10922. What was his object in taking that house?—I should suppose principally

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sally as an investment of money, and thinking that it was a purchase that would be available to him, and that might improve in value.

10923. *Chairman.*] Is he a man of property?—He is in very good [circumstances.

10924. Lord Viscount *Stormont.*] Were all the feus granted on the same day?—I cannot be precise as to that; but very nearly about the same time, I think.

10925. All the bills bear the date of the 30th of January 1836; can you account for their all bearing the same date?—It was, I suppose, the date of the delivery of the titles.

10926. Had those parties become completely in possession of these feus before the 30th of January?—I think before the idea of feuing was thoroughly taken up by the people, there had been some portion of the rents collected from one or more of the possessors, I cannot say precisely the number, as tenants. None of them had come to my particular knowledge, or come before me at all, because it was done by the factor and the clerk, as it is generally done, and without my presence; and as I mentioned before, I was not at that time in very good health, and was in some measure confined. How much of the rents stood in that situation I cannot say; but an arrangement was made, that the entry of the feuars should be held as at Martinmas 1835, and the rent, in so far as it had been received for the half year from Martinmas 1835 to Whitsunday 1836, should be returned, and that the half-year's feu-duty for that half-year should be paid along with the price of the feu. This arose from the rents in that part of the country being paid at Martinmas, for the term from the preceding to the following Whitsunday.

10927. How many feus did you grant at that time?—I think ten or twelve.

10928. How long had it been since you had granted any other feus?—Two or three years, I think, between the granting of those feus where the feuars built their own houses, and the feus where the houses were already built.

10929. Had there been any applications to you for these houses previous to the time of your granting them?—I think not.

10930. And were all these twelve applications made at one time?—Very much about the same time; there may have been a few days' interval, but there was no more.

10931. What occasioned that great desire, on a sudden, of so many persons to take feus?—I have no personal knowledge in the matter.

10932. Were they not taken for the purpose of obtaining votes?—What the purpose of the purchasers was I cannot speak to, but they were not given by me for that purpose.

10933. Did not the purchasers state that they wished to obtain votes?—I have mentioned already that I had no personal intercourse with them at all, from the circumstances I have stated.

10934. Did Mr. Purves state any thing to you with regard to votes, when he made the application to you to grant these feus?—I do not think he did, so far as I recollect.

10935. Sir *William Rae.*] Was your son at Caithness at that time?—I really do not know.

10936. He was a candidate for the county at that time?—Yes.

10937. Lord Viscount *Stormont.*] Do you know whether he had any knowledge of these transactions at the time?—I do not know; my impression is, that the negotiation was conducted by Mr. Purves.

10938. Had Mr. Purves a vote previous to this time?—None.

10939. Did Mr. Purves state to you whether he wished to take this feu which he took for the purpose of having a vote?—I certainly did think that these feus being so applied for by tenants of my own, and people connected with me, that they were applied for partly with a view of having a freehold qualification to bestow their votes as they thought proper; and I believed, undoubtedly, their votes were to be bestowed upon my son; that was my impression. But I also am certain that not one of them would have taken the feus if they had not known that they would yield them a full pecuniary consideration for the price given, independently of political privileges.

10940. Must not a person in possession of a feu be six months in possession before he can claim to be registered as a voter for a county?—I think so, but

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I am not quite master of the subject, for I am no politician, and I have not taken much trouble to inquire about the provisions of the Act.

10941. You state that the greatest part of these bills have been paid up since?—I believe so, and the evidence shows upon what my belief is founded.

10942. Have you received any information which guides you as to the day on which these bills were paid?—No; not the least.

10943. Then you are not aware whether they were paid at the time on which they became due, on the 30th January?—No.

10944. If they had been paid on the 30th January 1837, should you have been apprized of it?—I think not, because I had no doubt of the solvency of the acceptors, and I had given orders that they should not be harassed at all for the payment.

10945. Does the information you received lead you to suppose they were paid at that time or subsequently?—I have no information but what I have communicated to the Committee.

10946. Were there any other applications made to you to feu at that time?—I do not recollect any other.

10947. Might some have been made to Mr. Purves at that time without your hearing of it?—Yes.

10948. Mr. Purves was the sole negotiator of this business on your behalf?—I have no knowledge of any body else being concerned in the negotiation.

10949. *Chairman.*] Do you know whether any persons thought these terms too high?—I know Mr. Purves himself thought them too high in some instances, but I have heard no complaints since the purchases were made.

10950. Do you know whether any persons were deterred from coming forward, by the terms being considered high?—Not that I know of.

10951. *Sir William Rae.*] Do you think those feus would have been granted if there had been no contest in the county at the time?—I do not think they would have been granted at that time and precisely in that manner; I cannot suppose that.

10952. *Lord Viscount Stormont.*] Should you have taken these bills in part payment, if it had not been that there was a contest going on in the county at that time?—Yes, most undoubtedly; I would have taken those bills in part payment under any circumstances.

10953. *Chairman.*] Would you have considered it a transaction beneficial for your estate, whether there had been a contest going on or not?—Most certainly.

10954. If the same offers had been made to you by those persons, would you have agreed to them if there had been no contest?—Undoubtedly I would.

10955. And on the same terms?—And on the same terms.

10956. Do you think the contest probably operated in inducing those persons to come forward to make the offers?—I think it very likely.

10957. Had the contest any operation with you in making you agree to the offers?—Not the least. I was very happy to embrace the opportunity that was afforded me of carrying into execution the plan I had previously formed.

10958. *Lord Viscount Stormont.*] Do you know the political opinions of those persons?—No, not at all. I do not believe they have any political opinions, nor one-half of the 10*l.* freeholders in the county. They are uneducated people as to matters of state, their minds never having been directed to those subjects.

10959. Do they not espouse one side more than another?—Yes, but I should suppose not very much from political motives.

10960. *Chairman.*] If any person had come forward, and made you an offer, would you have inquired into what his political views were?—Not the least; I would not have accepted of an offer made by any person who was pledged to a candidate opposed to my son; but if he came to me as an indifferent person, not pledged to any one, I should have accepted his offer.

10961. Whatever his political opinions were?—Whatever his political opinions were.

10962. *Lord Viscount Stormont.*] If you knew him as a person of strong political opinions opposed to your son, though he had given no positive pledge, would you have granted him a feu?—If he had said he was perfectly free from engagement, and was to exercise his own judgment in disposing of his vote, I should have given it to him most frankly.

Veneris, 9^o die Junii, 1837.

MEMBERS PRESENT.

Lord Viscount Stormont.
Mr. Bingham Baring.

Mr. Fox Maule.

THE LORD ADVOCATE IN THE CHAIR.

¹ Mr. John Fotheringham, called in; and further Examined.

Mr.
John Fotheringham.

9 June 1837.

10963. Lord Viscount Stormont.] WHEN the Committee adjourned the day before yesterday, you stated that you purchased a property in Innerleithen?—Yes.

10964. Will you give the Committee the particulars of that purchase?—I purchased it for Sir Thomas Gibson Carmichael.

10965. From whom did you purchase it?—Dr. Wilkie.

10966. What price did you pay for it?—Four hundred and fifty pounds.

10967. What further particulars have you to state with regard to it?—After the disposition was written out there were two votes attempted to be put upon it, but they were rejected by the sheriff.

10968. Were those life-rents votes?—Both life-rents; the one was an exchange with a Mr. Wilson, of Hawick, and the other was given to a Mr. Robb, at West Linton, as a compensation for the loss of a son, who had been killed in consequence of Sir Thomas's carriage going over him.

10969. Are there any other cases?—There are no others in which I purchased property.

10970. Are there any cases where you advanced money to any persons possessing votes or claiming a right to vote in order to prevent their selling their property?—None.

10971. Are there any voters to whom any sums of money have been advanced by you?—None, except those mentioned.

10972. Were you ever employed to negotiate with persons who were willing to take life-rents?—Yes.

10973. In which cases?—The first instance was a case by myself in favour of Mr. Wilson, advocate.

10974. Were you selling a life-rent of part of your house?—I was.

10975. What price did he pay you for it?—The price agreed on was, I think, 130 £. to the best of my recollection, for which he granted his bill.

10976. Did he pay any part of it in cash?—None.

10977. Has he paid any interest upon it?—At the execution of the disposition he entered into a tack by which he let to me the property I had conveyed to him, and the rent of that part went in extinction of the interest.

10978. Did you make over to him a part of the house in which you lived?—I made over the *pro indiviso* half.

10979. It was a house, was it not?—It was a house and garden.

10980. Do you live in that house?—I do.

10981. Are you his tenant?—I was his tenant.

10982. Are you his tenant now?—No, he has reconveyed the property to me.

10983. Did you pay him any rent for this part of the house?—The rent of that half went in extinction of the interest, and the interest was marked upon the back of the bill, and he gave me a receipt for the rent of equal amount.

10984. What was the rent that you paid or were supposed to pay to him?—Ten guineas.

10985. What was the amount of interest upon the bill of 130 £.?—I think the interest of the bill that was granted was just the amount of the rent received.

10986. Did he pay ten guineas per annum interest on a bill of 130 £.?—I cannot state exactly the amount just now; I have not my books, but the one just amounted to the other.

10987. Then if the rent was ten guineas the interest must have been ten guineas?—Yes.

10988. Is

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10988. Is that the rate of interest common in Peebles, ten guineas for 130 l.
—No, not for 130 l.; it was more than that.

10989. How much more?—I think it must have been upwards of 200 l.

10990. Was that bill in your possession?—Yes, it was.

10991. Have you it with you in London?—No, I have not.

10992. Where do you keep that bill?—He sent it to me, being the amount of the price, and I kept it among my own private papers, and he got the disposition along with the lease and kept them in his possession.

10993. *Chairman.*] You said he had given it back?—Since the Registration Court, when my claim was rejected, he denuded himself of that *pro indiviso* half of the property.

10994. And then did you restore the bill to him?—I restored the bill to him.

10995. *Mr. Baring.*] At the same time did you recover from him the property in the house you had transferred to him?—Yes.

10996. *Lord Viscount Stormont.*] Did you re-purchase the life-rent from him? Yes.

10997. What sum did you pay for it?—The same sum that he agreed to pay, and for which he gave me his bill.

10998. Then you merely paid him back his own bill?—Yes.

10999. With interest?—The rent of the property answered the interest from the time that it had been last settled.

11000. Cannot you recall to your recollection what the exact amount of that bill was?—It was according to his age; and I do not recollect at the present moment what it was, otherwise I would inform the Committee.

11001. What interest did the bill bear?—I do not recollect, but the interest was to correspond with the amount of the rent, and I hold in my hands the tack that was returned by him to me.

[*The Witness produced the document.*]

11002. This was a life-rent lease?—So I have stated.

11003. When did you agree to take a bill in part or in whole payment?—At the time that I agreed to convey over the *pro indiviso* half of the property.

11004. Did you mention to him at that time what was to be the amount of interest that he was to pay for that bill?—Yes, it was to correspond with the rent.

11005. Was that the agreement that was entered into between you, that he was to pay just as much interest for the bill as you were to pay rent to him for the subject?—The interest was to correspond with the amount of the rent I was to pay him.

11006. Was that the agreement entered into at that time between you?—It was.

11007. Were there any witnesses to that agreement?—I believe Mr. Rutherford of Edinburgh was present at the time.

11008. How long was Mr. Wilson in possession of these subjects before he reconveyed them to you?—The deed was executed in the month of January, and he remained the proprietor of that part of the property till after the Registration Court, I think till the month of October 1836, when he re-conveyed it to me.

11009. On what day did he re-convey to you?—I do not recollect, but it was after the Registration Court of 1836.

11010. What month was it?—I think it was in the month of October.

11011. In point of fact, then, no money ever passed between you during the whole course of this transaction?—None.

11012. Are there any other cases?—There is Mr. Gray, of Broomknowe; he executed a life-rent disposition in favour of his only brother, who resides with him, and assists in the management of the lands of Broomknowe, of a share of the property, at a rent of ten guineas per annum.

11013. Did you purchase the property?—He executed a life-rent disposition in his brother's favour for a certain sum of money, for which a bill was granted. His brother was to pay him 12 l. rent, and I hold the tack, which was put into my custody for the behoof of the parties.

11014. What are their Christian names?—James and Alexander Gray.

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11015. Which

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11015. Which granted the life-rent?—James granted a life-rent disposition in favour of Alexander.

11016. It was not for love, favour and affection?—No, it was for a consideration.

11017. What was the consideration that was paid?—I do not recollect.

11018. It was not paid in cash, it was paid by a bill, was it not?—Yes, by a bill.

11019. Did you ever see that bill?—I did; my clerk wrote it out I think.

11020. What was the amount of it?—I do not recollect; it was like the other, according to his age.

11021. Who was in the occupation of those subjects?—Mr. James Gray.

11022. Is he the tenant of his brother?—He is the tenant of that part that he disposed to his brother.

11023. What rent does he pay for it?—Twelve pounds.

11024. Is there any interest upon the bill?—The interest, I think, just amounted to the same sum yearly, and the one went in extinction of the other.

11025. Though you cannot recollect the exact amount of these bills, cannot you guess, or let the Committee know, as nearly as possible, what the amount was?—I do not recollect; for it all depends on the age of the person. If I had thought I should have been examined on that particular point, I would have brought more information with me, but I do not wish to state what is not accurate.

11026. Were you present when the agreement was entered into between the brothers, that the one should grant a bill, and that the other should convey the life-rent?—It was the eldest brother, James, that called upon me, and told me he was going to do this, and desired me to write out the disposition. I do not know what agreement was entered into between the two brothers in regard to how it was to be paid, but it was paid by a bill, and the bill was given to James, who handed over the disposition to his brother.

11027. *Chairman.*] Did you make the calculation to make out the bill?—I think it was Provost Thorburn who made the calculation.

11028. Lord Viscount *Stormont.*] What age is Alexander Gray?—He may be about 50.

11029. You have yourself entered into calculations as to the value of the lives, have you not?—No, it was Mr. Rutherford that made the calculation with regard to my life-rent granted to Mr. Wilson.

11030. Do you know whether a rent has ever been demanded by the one brother of the other?—There has been a marking upon the back of the bill to the effect, that the interest was paid, and a receipt granted for the rent.

11031. Did you see that marked upon the back of the bill?—I did.

11032. When did you see that marked?—It was six months after the date of the disposition.

11033. In what month was the bill granted?—The bill was granted in the month of January.

11034. One thousand eight hundred and thirty-six?—One thousand eight hundred and thirty-six.

11035. Did you look into the bill at that time to see what the amount of it was?—I must have done so.

11036. What interest is generally given for bills of that description?—It depends upon the agreement of the parties.

11037. Do you know what interest was given upon this occasion?—No, I do not.

11038. Was not that stated upon the back of the bill?—No.

11039. In whose possession is that bill?—In the possession of Mr. James Gray.

11040. Did you give it back to him?—Yes; it was delivered up to him after the marking was put upon the bill.

11041. When was it given back to him?—I do not recollect; it was not more than half an hour in my possession.

11042. Was it stated on the back of the bill that the rent and the interest were paid?—No.

11043. What

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11043. What were the words that were stated on the back of the bill?—I could not give the precise words; but I can give what I think would be the effect of them—"By cash, being half a year's interest of the within bill" so and so, mentioning the sum.

11044. What was the sum mentioned?—I do not recollect, but if it corresponded with the lease it would be six guineas.

11045. Taking the interest at 4 per cent. upon the bill, what would be the amount of the bill?—At 4 per cent., it would be 312*l*.

11046. Would that be the sum that ought to have been paid for a life-rent to the value of 12 guineas yearly, of a man who was of the age of 50?—I never made any calculations either in regard to that or any other life-rent.

11047. Have you seen the calculations that have been made by other persons?—No, never.

11048. As a professional man, has it never come under your observation to know what is the value of lives given by insurance offices?—I have never had the management of any case where I required to make any calculations, or even to consult these insurance tables.

11049. Is there any other case you could mention?—There is the case of John Paterson; it was an exchange of a vote with a Mr. Andrew Kerr, of Selkirk.

11050. Did any money pass in that transaction?—None.

11051. Was there a lease granted from Kerr to Paterson, of his property?—I do not recollect whether there was a lease or not.

11052. Who occupies this house of Mr. Paterson's?—Different tenants.

11053. Does Mr. Paterson occupy it himself?—Part of it.

11054. Is that the part which he made over in life-rent to Mr. Kerr?—Yes.

11055. Is he the tenant of Mr. Kerr?—He is one of the tenants.

11056. Has Mr. Kerr more than one tenant in that part of the house?—Yes.

11057. What rent does Mr. Paterson pay to Mr. Kerr?—I do not recollect; the sum mentioned was 130*l*.

11058. The sum mentioned for what?—The sum mentioned as the consideration money.

11059. Did you not say it was an exchange for another life-rent, and that no money was paid?—There was no money actually advanced, but the disposition bore 130*l*.; in return for that, another disposition was executed by Kerr in his favour, of a similar amount.

11060. Did any bills pass there?—No bills.

11061. Was it a house in Roxburghshire that Kerr held?—I think it was a house in Selkirkshire.

11062. Does Mr. Kerr reside in that house?—I do not know.

11063. Does Mr. Paterson reside in that house?—Mr. Paterson occupies part of the property in Peebles.

11064. But in Selkirk?—No.

11065. Does he let that house?—Further than knowing it was an exchange of votes, I had nothing to do with the transaction.

11066. Were you employed as agent in this transaction?—As agent for Kerr, in writing out the disposition, by Mr. Paterson, but not in the writing out of the disposition by Kerr to Mr. Paterson.

11067. Is there any lease granted by Mr. Kerr to Mr. Paterson?—None that I know of.

11068. Was there any private agreement made at the time when this transaction took place?—I never saw them together.

11069. Were you a party to any further agreement in this case?—No.

11070. Have you any other cases?—I have no other case in which the parties were inrolled; there are other cases, but their claims were rejected.

11071. Were any of those claims rejected as being of a colourable nature?—The case I was going to mention was where part of the property conveyed belonged to another individual.

11072. What case was that?—It was the case of James Williamson, of Hawick, and George Veitch, of Peebles.

11073. Were life-rents granted to them upon a shop in Peebles, of Provost Thorburn's?—Yes.

11074. And upon what account were their claims rejected?—On account of

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Provost Thorburn's conveying in the disposition part of a property that did not belong to him.

11075. To whom did that property belong?—He had it in lease from Sir John Hay, the present Member.

11076. And he conveyed in life-rent that which he held in lease?—Yes; the deed was not so explicit as it ought to have been, and the sheriff considered that that was embodied in the disposition, and therefore rejected the claims.

11077. Were you the agent in this transaction?—In the disposition to George Veitch, I wrote out the deed.

11078. What price did George Veitch pay for his life-rent?—I do not recollect; Provost Thorburn made the calculation himself according to Mr. Veitch's age, who is about 30 years old.

11079. Did you not write out the disposition?—Yes, but I did not make the calculation.

11080. Was not the price stated?—It was, but I do not recollect the amount.

11081. Did not the sums of money that passed in these negotiations sometimes attract your notice; you seem to forget every case?—There were so many of them that I really do not recollect.

11082. Was cash paid for this life-rent?—No, a bill was granted.

11083. For the whole amount?—For the whole amount.

11084. Who wrote out that bill?—I think it was Mr. Veitch himself.

11085. Are you sure it was not written out in your office?—It may have been written out in my office, but it was not done by me.

11086. Did you see that bill?—I think I have seen it.

11087. What was the value of the life-rent?—I do not recollect.

11088. Did you defend this case in the Registration Court?—Along with Mr. Rutherford I did.

11089. Did it appear before the Registration Court what the value of the life-rent was?—It did.

11090. Have you any note of that?—No.

11091. What interest was paid upon this bill?—I do not recollect.

11092. Did Provost Thorburn continue to be the tenant of Veitch?—Yes, a tack was entered into between them.

11093. Who drew up that tack?—I think it was my clerk.

11094. Did you give directions for the drawing out of it?—I was absent at the time, and Provost Thorburn instructed him to do it.

11095. Have you ever seen that tack?—I have.

11096. Is it a life-rent lease?—It is a life-rent disposition, and of course the tack is during his life.

11097. What was the rent?—I do not recollect.

11098. Did you not see what was the amount of rent that was paid?—I must have seen it at the time, but I cannot charge my memory with the amount.

11099. Then you can neither remember what the amount of rent was that was to be paid for the property, nor the amount of the value of the life-rent, nor the amount of the bill, nor the interest that was to be paid upon the bill?—No.

11100. Was there the same agreement entered into in this case as in those which you have stated before, that the interest of the bill was to cover the amount of the rent?—I do not know the agreement that was entered into between Provost Thorburn and Mr. Veitch, but I think that the interest was to liquidate the rent; that is, the amount of the one was to correspond with the amount of the other.

11101. You were not agent in the case of Williamson, were you?—No.

11102. Have you any opportunity of knowing whether the same agreement was entered into there or not?—I rather think, in the case of Williamson, that it was an exchange of votes, but I did not write out the disposition, though it was sent to me for signature.

11103. You did not read it over, then?—I read it over to Provost Thorburn, but I do not recollect the terms of it.

11104. Is Mr. Williamson resident in the county?—He is a merchant in Hawick, in the county of Roxburgh.

11105. What is the total sum that you advanced, as agent for Mr. Carmichael, to persons for the purpose of acquiring votes?—One thousand and eighty-three pounds.

11106. That

11106. That was up to February 1836?—That is the whole money that I have paid since December 1835, or January 1836.

11107. It was all prior to the last registration?—All prior to the last registration.

11108. Did you act in all cases under the direction of Mr. Rutherford?—In all cases.

11109. Did you apply to Mr. Rutherford, in every case, to ask his consent before you advanced the money?—I think, with one exception, I did so.

11110. Were those the instructions that you had previously received from Mr. Rutherford?—Yes.

11111. You stated, that, in every case except one, you received the money that you so advanced, from Mr. Cormack?—Yes.

11112. In what shape did that money come to you; was it in cash or in bills?—It was by a check or letter of credit upon the agent of the British Linen Company's bank.

11113. By whom were those checks signed?—By the manager of the bank.

11114. Was it Mr. Cormack that always sent you these letters of credit?—It was.

11115. *Chairman.*] Are you aware that any assistance was given by Sir John Hay to voters in Peebles in other parts of the country?—Yes.

11116. In what way?—There was assistance given to John Robertson, who was without any money of his own, to purchase a property; and the property was purchased in Edinburgh by Mr. Robertson, Sir John Hays' agent, for him.

11117. What reason have you for believing that?—Because he was without money, and I saw the disposition in his favour; it was sent to me for the purpose of passing the infestment in his favour.

11118. Lord Viscount *Stormont.*] How does that prove who advanced the money?—It was well known in the town of Peebles that Sir John Hay or the party advanced him the money.

11119. Do you know of it yourself?—I have heard it from Mr. Douglas, Sir John Hay's political agent in Peebles.

11120. He told you that Sir John Hay had advanced the money to this Robertson?—Yes, he told me so the day before I left Scotland; I asked him if the Committee had inquired whether he had advanced any money, and he said he was not asked the question, otherwise he would have told the Committee the fact.

11121. *Chairman.*] Do you know any other cases?—There is the case of James Andrews and John Bathgate; 400*l.* was advanced to John Bathgate by Sir John Hay.

11122. Lord Viscount *Stormont.*] Do you know that?—Yes.

11123. How do you know it?—I had the revising of the disposition and assignation by Mr. Renton, in his favour.

11124. Was there any thing contained in that disposition, to show that Sir John Hay had paid 400*l.*?—It bore that the money was paid by Sir John Hay.

11125. Was that on the disposition?—Yes, on the disposition and assignation of a bond; the original bond was by Mr. Bathgate's father in favour of the Rev. Mr. Renton; he wanted the money, and Sir John Hay advanced it, and took a disposition and assignation from Mr. Renton.

11126. This money was not paid then for the purchase of the property?—No, it was a transfer of the bond.

11127. If the case is understood rightly, Sir John Hay took up a bond?—He got a disposition and assignation of the original bond in favour of Mr. Renton.

11128. Then the bond was transferred from Mr. Renton to Sir John Hay?—Yes; and Mr. Renton received the money from Sir John Hay.

11129. Then Sir John Hay lent 400*l.* upon heritable security?—Upon this property belonging to John Bathgate; and John Bathgate in the disposition was taken bound to account to Sir John Hay for this sum of 400*l.*

11130. But Sir John Hay purchased up a bond upon which he had heritable security?—Yes, he paid the amount of that bond.

11131. Is not that nearly similar to taking up a mortgage in England?—I do not know.

11132. Did Sir John Hay do this for political purposes?—Yes.

11133. Are you sure of that?—That is my opinion.

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11134. What

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Mr
John Fotheringham.
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11134. What reason have you to believe that?—Because Mr. Bathgate was a supporter of his, and but for that the property would have come to be sold; I, as agent for Mr. Renton, threatened to bring it to a sale, unless the money was paid, and it was advanced by Sir John Hay.

11135. What was the reason of your threatening to do this?—Mr. Renton wanted to receive his money.

11136. Does Mr. Renton live in the county?—He does.

11137. What are his political opinions?—He entertains liberal opinions.

11138. Is he a supporter of Mr. Carmichael?—I never heard him say so, but I think he would support him.

11139. Do you consider him as one of Mr. Carmichael's supporters?—I do.

11140. Do you know whether he did not call up this money for political purposes?—I am not aware of it.

11141. Are you sure that he did not?—Yes.

11142. What makes you sure that he did not?—Because his reason for calling it up was not only in consequence of the interest being irregularly paid, but because he wanted to buy a property of his own.

11143. Had not the interest been regularly paid?—There was some misunderstanding with regard to the payment of the interest.

11144. Are you Mr. Renton's professional agent?—Yes.

11145. His private agent?—His private agent.

11146. Did you advise him to call this money up?—No, I did not.

11147. Did he do it entirely of his own accord?—Entirely of his own accord, to my knowledge.

11148. Not on any suggestion of yours?—No.

11149. *Chairman.*] Do you know of any other cases in which advances were made by Sir John Hay?—I believe advances were made to one Mr. George Thorburn, farmer, Elliot's Parks.

11150. How do you come to know that?—It was a report at the time.

11151. You only speak from report?—Only from report, and from the individual who lent him the money; Thorburn had a sum of money, borrowed from Mr. Notman of Chapel Hill, and Mr. Notman wished up his money, and a friend and adviser of Sir John Hay's paid it to him; and it was said that it was advanced by the party to secure Thorburn's interest.

11152. Who is Mr. Notman?—A farmer of Chapel Hill.

11153. Lord Viscount *Stormont.*] Is he a supporter of Mr. Carmichael's?—Yes.

11154. Is he on his committee?—No.

11155. Was he on the local committee?—I do not think he was.

11156. What induced him to call up this money?—I do not know; I never heard him assign any reason.

11157. Have you any reason to believe they were political reasons?—I do not think they were, because they were on very intimate terms.

11158. Who paid the money?—Mr. Notman told me, I think, that it was Mr. Murray, of Drochill.

11159. Was it an heritable bond?—No, a bill.

11160. Is there any heritable burden upon the property?—He is only a tenant; he has no heritable property.

11161. Then it was a mere debt, was it?—It was a mere debt.

11162. What was the amount of it?—I do not recollect.

11163. Was it a large or a small sum?—It was a small sum, about 60*l.* or 70*l.*; it did not exceed 100*l.*

11164. Is Mr. Thorburn in good circumstances?—No, not in very good circumstances.

11165. Did Mr. Murray take a bill?—I do not know.

11166. As Mr. Murray paid the money, why was it you stated just now you were inclined to believe that it came from Sir John Hay?—Because Mr. Murray is one of the acting committee for Sir John Hay, and it was said he had advanced it for the party.

11167. Was it said by Sir John Hay's friends or his opponents?—It was generally reported.

11168. Was it said by his friends or by his opponents?—I do not know; Mr. Notman said Mr. Murray had advanced it.

11169. Does

11169. Does all the money that Sir John Hay's friends lend in the county of Peebles come from Sir John Hay?—I do not know.

11170. You have no reason to know as a fact that this money did come from Sir John Hay?—Thorburn's money?

11171. Yes?—No.

11172. Then your evidence is not from your own knowledge, but merely from report?—Principally from report.

11173. *Chairman.*] Is there any other case of the same nature?—There is a case of William Vessie, of Kirkburn.

11174. What was that?—He is a tenant under Mr. Campbell, of Kailzie, and he got into arrears of rent, and being an elector of the county, and not being certain which way he would vote, he first applied to Sir Thomas Carmichael, or Mr. Carmichael, and they refused to lend it; and then he went to Sir John Hay, and, as report says, he got what he wanted from Sir John.

11175. What reason have you for believing that?—Because he then, in some degree, declared himself for Sir John Hay.

11176. Have you any knowledge of the fact?—Nothing further than that, on my canvassing him afterwards, he was a different man after he had been refused this money.

11177. Did he say he had got the money?—No, it is mere report; I have no further knowledge of the fact.

11178. Lord Viscount *Stormont.*] If Sir John Hay had paid these persons' rent for the purpose of obtaining his vote, that would be bribery, would it not?—I should think it amounts to that.

11179. Do you consider then that you are justified in making that accusation of bribery before a Committee of the House of Commons upon the ground of mere common report?—No, I thought I was desired to mention every instance I knew, and I gave the grounds upon which I mentioned it, that it was mere report.

11180. *Chairman.*] Was there any election or vacancy at that time?—No, none.

11181. Lord Viscount *Stormont.*] Was not there a prospect of an election?—There has been a greater prospect since; I do not recollect any prospect then.

11182. *Chairman.*] Has there been an election since that time?—No.

11183. Lord Viscount *Stormont.*] Both parties were canvassing at that time, were they not?—Yes, both were canvassing.

11184. Mr. *Maule.*] What are the politics of his landlord?—They are conservative.

11185. *Chairman.*] In the advances that were made on the properties that were purchased, were the applications made by the individuals who acquired them?—Yes.

11186. To you?—To me.

11187. Was there any instance in which the offer was made to them to obtain properties for them or to give them votes?—I do not think it. It was on their own application.

11188. Lord Viscount *Stormont.*] In every instance?—In every instance that I am aware of.

11189. Were they persons in good credit?—I consider that they were.

11190. Did you consider them as able to repay the advances that were made?—I did; but for that I would not have recommended it.

11191. Are you willing to furnish the Committee with a statement of all the advances you made, and the money that was remitted to you, by Sir James Craig?—Yes.

The Witness delivered in the same, as follows:

Sums advanced to the following Individuals:

Thomas Borrowman, upon bill	-	-	-	-	-	£. 35
James Thorburn, upon ditto	-	-	-	-	-	130
James Veitch, upon ditto	-	-	-	-	-	50
Adam Walker, upon ditto, by him and father	-	-	-	-	-	130
John Corsare Walker, upon ditto	-	-	-	-	-	150
William Wallace, upon ditto	-	-	-	-	-	300
Robert Wilson	-	-	-	-	-	200
John Dickson	-	-	-	-	-	53
						£. 1,048
John C. Walker	-	-	-	-	-	35
						£. 1,083

ACCOUNT CURRENT between *John Fotheringham*, Writer, Peebles, and *Sir Thomas G. Carmichael*, of Skirling, Bart.

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1836:		£. s. d.	1836:		£. s. d.
Jan. 9	By Cash from Mr. Rutherford to pay Henry Calderwood - - -	36 - -	Jan. 12	Topaid Henry Calderwood balance of price of his property - -	36 - -
" 18	Ditto from Mr. Cormack, to pay Mr. Purdie - - - - -	260 - -	" 20	" Paid Mr. Purdie price of his property - - - - -	260 - -
" 23	Ditto from ditto, to pay Dr. Wilkie -	450 - -	" 26	" Paid Mr. Wilkie price of his property - - - - -	450 - -
" 26	Ditto from ditto, to pay Adam Girdwood - - - - -	50 - -	" 29	" Paid Adam Girdwood price of his property - - - - -	50 - -
" 30	Ditto from ditto, to pay John Corsare Walker, in part of Mr. Wilkie's property, purchased for him - -	180 - -	" 30	" Paid Peter Ker price of his property - - - - -	53 - -
Feb. 1	Ditto from ditto, to pay Mr. Wilkie and Peter Ker - - - - -	386 - -	" 30	" Paid Mr. Wilkie price of his property - - - - -	330 - -
" 4	Ditto from ditto, to pay James White, finishing house, at Innerleithen -	75 - -	" 30	" Paid price of Robert Wilson's property - - - - -	200 - -
" -	Ditto from ditto, to pay my advances to Robert Wilson, and sum received from John Corsare Walker -	17 - -	Feb. 9	" Paid James White for finishing house at Innerleithen - -	75 - -
		£. 1,454 - -			£. 1,454 - -
Mar. 26	Ditto from ditto, to pay William Wallace value of property - - -	300 - -	March -	" Paid value of property purchased for Mr. Wallace - -	300 - -

11192. Does this contain all the cases to which you have referred in your evidence?—Every case.

11193. Has any of the money been repaid by the parties?—None, except what I mentioned, 180*l.* by Walker, and 20*l.* by Wilson.

11194. There is 36*l.* by Mr. Calderwood?—That was remitted to me by Mr. Rutherford, I only got it from him, and paid it over to Mr. Calderwood, which I did.

11195. *Chairman.*] Do you know from whom it came?—It is a conjecture of my own, that it was the balance of Mr. Shaw's purchase.

11196. You believe it was the balance of Mr. Shaw's purchase?—Yes.

11197. What is the next item you have upon that list, take them item by item?—The next is 260*l.*; 130*l.* of which was advanced to James Thorburn, whose case is already mentioned.

11198. Have you already spoken to all the sums in that list?—I have; but there were two of them remitted at the same time, and the other 130*l.* was paid to Adam Walker, which makes the 260*l.* The property was purchased from Mr. Purdie. Then the next is to Dr. Wilkie, being the amount of the purchase for Sir Thomas Carmichael of Innerleithen.

11199. Lord Viscount *Stormont.*] What is the next item?—The next item is 50*l.*, advanced for James Veitch, a military pensioner. The next is 180*l.* that I received from Corsare Walker; I advanced the 330*l.*, and I received back from him 180*l.*; of course I pay away the full amount on the one side, and give credit for 180*l.* on the other.

11200. What is the next?—The next is a sum of 386*l.* to pay Corsare Walker's purchase, and the purchase on account of John Dickson.

11201. John Dickon was 53*l.*?—Yes.

11202. What was the next?—The next is a payment to James White, carpenter; in Peebles, for finishing a house at Innerleithen, belonging to Sir Thomas Carmichael.

11203. Was that the house that you purchased previously?—Yes.

11204. Was that money expended before the life-rents were granted?—It was; the repairs were completed before that time.

11205. What is the next item?—Seventeen pounds, being my advances to Robert Wilson, and the sum received from John Corsare Walker; it will be found that afterwards there is 35*l.* paid to him, and that is the difference; I received that from Mr. Carmichael, by which you will find that the debtor and creditor agree.

11206. Is that all?—Then there is 300*l.* I received to pay William Wallace.

11207. That

11207. That is the sum that is not included?—That is the one that I have not furnished Sir James Gibson Craig; this account was furnished soon after the advances were made.

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11208. *Chairman.*] These are all the pecuniary transactions you had with Sir James Craig?—Yes.

11209. And you have explained each of them?—Yes.

11210. Have you any thing further to state to the Committee?—I have nothing further to state; but if there are any other questions that occur to the Committee, I shall be very happy to give them every information in my power.

William Horne, Esq., called in; and Examined.

11211. *Chairman.*] YOU are a proprietor in the county of Caithness?—I am.

W. Horne, Esq.

11212. Do you reside there?—I reside partially there; I am a good deal resident in Edinburgh, and occasionally in the county of which I am sheriff, Haddingtonshire.

11213. Have you any information which you are desirous to communicate to this Committee?—Since I came here, as I mentioned to the Chairman of the Committee, I have had an opportunity of seeing the First Report of the Committee, and casually looking it over I saw some statements made by one of the witnesses examined, which induced me to think myself called on to offer any explanation it is in my power to give upon the particular points to which I referred. That portion of the evidence to which I allude will be found in page 268 and some subsequent pages of the printed minutes, commencing with question No. 6976; but I cannot speak as to any particular individuals but those with whose qualifications I was myself connected.

11214. What have you to state to the Committee with regard to those individuals?—I would state in the first instance to the Committee, that it appeared to me, both from the opinions which I had formed myself, and also from the knowledge which I possessed of the opinions generally of my brethren the sheriffs of Scotland, that life-rent rights fairly, *bona fide*, honestly and out and out given, formed proper qualifications under the Scotch Reform Act; and being of that opinion, and seeing at the same time, that the operation of the Reform Act in many of the counties in Scotland, and particularly in the county in which my property is situated, was that the landed interest was in a great measure outnumbered, if not overwhelmed, by the 10 $\frac{1}{2}$ qualifications in the villages, I conceived that it was the duty of every landowner who had means fairly and honourably to carry the thing into effect, to sell estates which might give the qualification to classes of persons equally well enabled, if not better enabled, to exercise that right with intelligence and public benefit. Accordingly, acting upon this principle, I thought it right to make some sales to individuals, in the class of society to which I shall immediately direct the attention of the Committee, of a detached property of mine by life-rents.

11215. Who were the individuals to whom you made those sales, and in what manner were they made?—The first was Lieutenant Colonel Campbell, who had been a freeholder of the county, and afterwards an elector on a 50 $\frac{1}{2}$ qualification, but who was changing his residence and going into a neighbouring county, to Caithness, and who, unless he obtained a new qualification, would necessarily be struck off the roll of his native county, the county of Caithness.

11216. Is he now no longer resident in the county?—He removed from the county of Caithness in May 1836, subsequently to his acquisition of this new qualification.

11217. *Mr. Maule.*] You gave him the qualification, because he was about to remove from the county of Caithness, and was about to lose the qualification he held?—I sold it to him at an annuity price, for the price at which he would have bought an annuity according to the annuity tables.

11218. What was the reason of your doing this?—Because he expressed a desire to acquire an estate of such a description as would give him the right.

11219. Lord Viscount *Stormont.*] He was a native of Caithness?—He was a native of Caithness.

11220. Had he resided there some part of his life?—He had resided there from the termination of the war; he served in the 79th regiment during a great part of the Peninsular and French war.

11221. Did he take a great interest in the county of Caithness?—I cannot say that he took any great interest in the politics of the county, but he felt a

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very great interest in the county of his nativity and the county in which he had lived so large a portion of his life.

11222. And was that the reason that he was desirous of acquiring sufficient property in the county of Caithness to enable him to vote?—I so understood it; at the same time he was receiving an estate, which, according to the annuity tables, gave him value for the price which he was to pay.

11223. *Chairman.*] Have you any observations to make with reference to the case of Robert John Gunn?—Yes; it was perfectly well known that I would sell that particular farm in life-rent; it was rented at 42 *l.* or 45 *l.*; and it was well known that I would sell it in life-rent; it was not Mr. Gunn who spoke to me originally about it, but some friend of his, I think a Captain Henderson, who told me that Mr. Gunn had been talking about making a purchase of property of that amount.

11224. Lord Viscount *Stormont.*] Did Mr. Gunn purchase a life-rent?—He did.

11225. Did he complete his title?—He did; he got a disposition.

11226. He was rejected, was he not?—He was rejected; at least, so I understand.

11227. Can you state upon what ground he was rejected?—I cannot state the ground from my own knowledge, but I can state the ground which Mr. Gunn, in a letter which he wrote to me at the time, assigned for his rejection; I happened to be in a distant part of the country, either attending the Appeal Registration Courts at Edinburgh, or the County Courts of Haddington, and a statement was made to me that Mr. Gunn had been rejected by the sheriff, and the ground which was stated to me was, that Mr. Gunn had intimated as if a feeling existed in his mind that I might consider myself ill-used if he voted differently from the way in which I voted as a freeholder of that county; the statement was, that Mr. Gunn was rejected because he had stated that a feeling might arise in my mind, or in his own mind, that he would use me ill by so doing; I wrote to him immediately upon hearing of this, stating that such a representation had been made to me, saying that if any feeling of that description existed in his mind, he would do me the justice to admit that nothing had ever passed between him and me which gave the slightest foundation for any thing of the kind; I stated further to him, in the letter which I then wrote, that, if he had communicated the slightest hint to me that such a feeling existed in his mind, I would not merely have recommended him not to claim to register at all, but that, failing every other person, I would have been the individual who would have objected to him myself, if I had had the slightest notion that any feeling of the kind could have existed to any extent whatever. I had an immediate answer addressed to me by Mr. Gunn, stating that an erroneous account of the thing had reached me; that what he had stated in the Registering Court was that no such feeling existed in his mind; that he could not say what feeling might exist in my mind, but that nothing had ever passed which could lead him to imagine that such a feeling could exist in my mind, and that he certainly had not stated that any such feeling existed in his own mind. I have not that letter here, but that letter is in existence; it is in my possession in Edinburgh, and unquestionably if I had had any idea of the terms of the evidence to which I have referred as contained in this report, I should have brought that letter here with me, and if it is within the rules of a Committee of this sort still to receive it, I will transmit it on my return; it has the regular dates of transmission and the post-marks upon it.

11228. Do you know whether Mr. Gunn was put upon his oath or not?—I have heard so; I do not know it of my own knowledge; in fact, till I saw it stated in the report here, I was not aware of it.

11229. Can you state explicitly that you entered into no bargain with Mr. Gunn as to the manner in which he should exercise his vote?—Most certainly; I should consider such conduct extremely culpable.

11230. *Chairman.*] What is Mr. Gunn?—He is a surgeon at Thurso.

11231. Were you aware at the time what Mr. Gunn's political opinions were?—I really was not, but I believed that Mr. Gunn's political opinions were safe opinions with reference to the general interests of the country; I knew nothing more about them.

11232. Lord Viscount *Stormont.*] Do you consider that those persons to whom you granted life-rents are free to exercise their qualifications in any manner which they think fit?—Undoubtedly I do.

11233. In

11233. In every case?—In every case whatever.

11234. What was the next life-rent?—The next, I think, was Mr. Sheils, a solicitor at Wick.

11235. Have you any thing to state with regard to him?—If I were to say any thing, it would be to repeat in substance what I have said as to the other; Mr. Sheils is a man of very high character in his own profession in that part of the country; he has been settled as a solicitor there for nearly 20 years; he is a man in the rank of a gentleman, and is possessed of property enabling him to acquire such an estate as he did acquire from me.

11236. *Chairman.*] Who is the next?—The next is Mr. William Darling.

11237. Lord Viscount *Stormont.*] He was your farm steward, was he not?—I will explain to the Committee, in a very few words, the relation in which that person stands to me. In the year 1818 I came into the management of a very extensive estate in the county of Caithness; I made arrangements for a very large expenditure of money, not less than 40,000*l.* or 50,000*l.* My position as sheriff of East Lothian gave me an opportunity of appreciating the value of the services of a man of intelligence and practical knowledge, with reference to the operations I had in view. Mr. Darling was then with his father and his brother, in the joint occupation, as I believe, of a large farm, paying 300*l.* or 400*l.* a year rent. They thought that the father and one of his sons would be quite equal to the management of their concern there, and that the other might be enabled to take such a situation as I was ready to offer to a properly-qualified man. He came to me at that period, under these circumstances, and he has been at a very large salary in the management of my property ever since. I need not state to the Committee the exact emolument he derives from me, but it is such as to enable him, and I know practically and personally that he is a man in a situation to purchase to a far larger extent, and to pay his money down for it, than the property which he acquired from me. The prices in all these cases was the value of the annuity, and Mr. Darling received one of them. They granted bills to the country agent, at the moment when the deeds were signed.

11238. *Chairman.*] He granted a bill, you say; did he pay the bill?—The bill is overpaid; that is, I am his debtor, after his being debited with the amount of the bill.

11239. Lord Viscount *Stormont.*] Did he grant a bill to you?—Yes, it was put into the hands of the agents.

11240. Has he paid that bill since?—Yes.

11241. *Chairman.*] What is the next case?—The only other case is that of a conveyance to Mr. Maclaren.

11242. For what consideration?—A gratuitous conveyance.

11243. Who is Mr. Maclaren?—He is the teacher of a general assembly school established on my property.

11244. Were there any others besides those?—No, no others.

11245. Lord Viscount *Stormont.*] Were these transactions all of them of a *bonâ fide* nature?—Perfectly so. I would have no share in any transaction of the kind that was not perfectly independent and *bonâ fide*.

11246. *Chairman.*] Would you have granted this life-rent to Mr. Maclaren, or life-rents to other parties, if you had believed them to be persons whose political opinions were at variance with your own?—I should not be apt to make a sale to a person whose opinions are at variance with my own. I do not apply this to Mr. Maclaren's case, which was not a sale.

11247. Had you any conference or communication with other persons with regard to granting votes in the county of Caithness?—I am not aware that I had; in 1835 or 1836 I do not think I had; I acted entirely upon my own judgment.

11248. Lord Viscount *Stormont.*] Do you know of any persons, either in the county of Caithness or any other county in Scotland, who have sold or given votes to persons whose political opinions are at variance with their own?—I do not know of any; as to Mr. Maclaren, I would observe, that I was desirous to insure the continuance of his valuable services, as a teacher, upon my property; and, with that view I gave him a permanent right and interest, such as any parochial schoolmaster in Scotland possesses, a dwelling-house, a school-house, a garden and about six acres of land; I gave it to him gratuitously, because I knew that at that period offers were made to him of the office of parochial schoolmaster elsewhere.

11249. What was the value of that life-rent which you gave to him?—The life-rent, I should think, would be fully equivalent to 15*l.* a year;

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the houses cost me about 200*l.*, and he got besides a garden and six acres of land.

11250. *Chairman.*] Can you give any information to the Committee, with regard to the formation of any of the other life-rents in the county?—I cannot; I am entirely ignorant of all the others; I know nothing whatever about them.

11251. Lord Viscount *Stormont.*] Are there any other observations you wish to make to the Committee with regard to the evidence of Mr. Crawford as affecting yourself?—I think the statement which I have now made answers any thing that may bear upon me.

11252. What do you as a lawyer consider that the present life-rent qualification was intended by the Reform Act to be?—I can only judge from the terms of the Act, and if it was not intended that purchases of this description should confer the franchise, then I should hold that the preponderance given in the Scotch counties would almost universally have been to the householders or villagers over the landed interest, comprising the land-owners and the 50*l.* tenants; very generally that would have been the case. At the period of the passing of the Reform Act I paid some attention to these subjects, and the impression then made upon me was, that it would operate very much to overwhelm the landed interest in the counties of Scotland; I stated so to some high authorities as being the impression which I had upon the subject, and I was very much surprised that some of these authorities, supporters of the Reform Bill, said that it would have no such effect, and that it would tend to raise the influence of the landed proprietors, and of the agricultural bodies of the country. I did not see my way very well through that proposition; but if it was contemplated that all subdivisions of property should not give the qualification, then I do not understand upon what grounds such an opinion could be given, that the influence of the landed proprietors, generally speaking, would be increased, because without a further subdivision of landed property, I would almost say that in five counties in Scotland out of six the fact would have been otherwise.

11253. *Chairman.*] Can you give any information to the Committee as to the manner in which life-rent votes have been formed in other counties?—As a judge I have seen the modes in which they have been set to work.

11254. Have you been privy to the formation of any other votes by other parties?—None.

11255. Have you any other observations to make to the Committee?—Yes; I see that, with reference to one or more of these individuals, it is stated that they admitted they had not the means of payment. I do not consider that correct; besides, a man holding a right of annuity or life-rent can always get the price for it. In any case a valuable estate was transferred so that a man could at any time, if he were pressed for payment, realize the value from the sale of his annuity or life-rent; he would forfeit his vote, but the property would be still there, and would produce the price.

11256. Supposing the price to be calculated as you have stated, according to the person's life, and supposing that his life is worth 12 or 15 years' purchase, and he should die next year, how would you recover the price if he was not a person in good circumstances?—The estate then reverts, and you must come in as an ordinary creditor with the other creditors for the arrears of interest.

11257. But if he had no property, and died in a year, and it had been disposed of at 15 years' purchase, would you not lose 14 years' purchase?—The loss would not be so heavy, because the annuity would revert to myself.

11258. The estate reverts to you, but you lose the price?—The loss would only be for the single year at the worst, and if the man was possessed of any property you would be entitled to your share of it with the other creditors.

Martis, 13^o die Junii, 1837.

MEMBERS PRESENT.

Mr. Horsman.
Mr. W. Campbell.
Mr. E. Buller.

Captain Ferguson.
Lord Stormont.

THE LORD ADVOCATE IN THE CHAIR.

Mr. *James Macintosh*, called in ; and Examined.

11259. *Chairman.*] YOU are a proprietor in the county of Peebles?—Yes.

Mr. *J. Macintosh.*

11260. You reside at Lamancha there?—I reside during six months of the year at Lamancha.

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11261. Do you recollect Mr. William Gibson Craig and Mr. Alexander Graham coming to your house in the year 1835?—Yes, I do.

11262. At what time of the year was it?—It would be about the middle of September.

11263. Did they ever come to your house on any other occasion?—No.

11264. Did they propose to you on their own part, or that of Mr. Carmichael, or any other person, to divide your estate and cut it up into 10*l.* life-rents?—Never.

11265. Did they make any statement at all of that nature?—Nothing of the kind.

11266. Do you recollect having such a conversation with them, or would you if they had made any proposal of that sort have recollected it?—I am quite certain of it, if they had made any proposal of that kind ; during breakfast the only conversation was about other matters.

11267. Totally unconnected with the county?—Totally unconnected with the county.

11268. Which you think it unnecessary to state to the Committee?—Yes.

11269. Did they make any proposal of a joint-stock purchase of an estate to the value of 20,000*l.* or 30,000*l.*, in order to affect Sir John Hay's interest in the county?—They never spoke to me on that subject, neither of them.

11270. If they had done so, would you have recollected it?—Perfectly well, I am certain of that.

11271. Did Sir John Hay and Mr. Robinson call upon you?—They did that morning.

11272. Did you inform Sir John Hay or Mr. Robinson, that Mr. Gibson Craig and Mr. Graham had proposed to you to divide your estate, and cut it up into 10*l.* life-rents, or any thing to that effect?—No, nothing to that effect.

11273. Did you state to Sir John Hay or Mr. Robinson, that those gentlemen, on your refusing it, had pressed you to join in the joint-stock purchase of an estate to the value of between 20,000*l.* and 30,000*l.*?—I never did ; I never told them any thing of the kind.

11274. Then you are perfectly confident that no such proposal was made to you by either Mr. Gibson Craig or Mr. Graham?—I am quite certain of it.

11275. And that you never said there had been any such proposal made by those gentlemen?—I am also quite certain of that.

11276. Have you ever divided your estate, or made any life-rents upon it?—I have made two this year.

11277. Had you made any before this year?—None.

11278. What was your inducement to make them this year?—Because I was annoyed by my neighbours making so many, Mr. Mackenzie and Mr. Beresford.

11279. If Mr. Mackenzie and Mr. Beresford had not made them, should you have ever thought of making any upon your estate?—No ; I never thought of it till this year, and would not have done it unless they had done so.

11280. Then you do not in general approve of the creation of life-rents, unless in self-defence?—I do not.

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11281. To

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11281. To diminish the effect of those made by others?—I do not approve of it; I very much disapprove of it, and I should be very happy to burn the papers now; I am almost ashamed of it.

11282. Lord *Stormont*.] Are you quite ashamed of it?—I am almost so.

11283. *Chairman*.] Mr. Beresford's property and Mr. Mackenzie's adjoin yours?—Yes, they do.

11284. Did Mr. Graham or Mr. Gibson Craig canvass you for Mr. Carmichael at all, or did they canvass any other persons, as far as you know?—Never any one of them canvassed me.

11285. Mr. *Horsman*.] How came Mr. Craig and Mr. Graham to call upon you that day?—Mr. Craig was dining with me in the neighbourhood on the Saturday before, and I drove him as far as my gate on his way to Castle Craig; he mentioned he was to return home on the Tuesday following, and I asked him to breakfast with me.

11286. Was the visit in any way a political visit?—Not in the least.

11287. Or connected with the canvass of the county?—Not in the least.

11288. Had you known Mr. Craig or Mr. Graham any length of time?—Yes, I knew them both well, but I had not known them any length of time.

11289. At that time did you know them well?—Yes.

11290. Personally, had you known them any length of time?—I had not known Mr. Craig any length of time; I think I was introduced to him some time before; I am not certain of the time.

11291. Had you any conversation with him as to any arrangements with respect to the politics of Peebles-shire?—Not on that morning.

11292. Was there any body that breakfasted besides yourself with him?—My wife and two young ladies.

11293. Were they present during the whole conversation that took place between you and those two gentlemen?—Yes.

11294. Was that conversation general, or was it relating principally to the county of Peebles and the politics of the county?—It was not relating to the county of Peebles at all, but other matters.

11295. You are a warm supporter of Mr. Carmichael's in Peebles-shire?—I am.

11296. Do you know generally what is done by himself and his agents?—No, I do not.

11297. Did you ever hear of such a thing being done as cutting up an estate to make votes by Mr. Carmichael or any of his agents?—No, I never did.

11298. You never heard any thing of that kind?—No.

11299. I think you stated that Sir John Hay and Mr. Robinson came to call upon you?—Yes.

11300. They came to canvass you, did they?—I am not certain; they had been dining in the neighbourhood the day before, entertaining the electors at Noble-house, and when Sir John came in, he asked me why I did not dine with him yesterday; my answer was, I never dined with any gentleman that had not invited me.

11301. Was this at the time that Sir John Hay was visiting the county and canvassing?—Yes.

11302. Had he called on you before that?—Not at that time; he had called on me before, but not during the canvass.

11303. Had you any conversation with him at all as to what passed between you and Mr. Gibson Craig and Mr. Graham?—No, I do not think there was.

11304. Not as to what took place between them and you?—No.

11305. Did you make any allusion to any thing you might do in the county, so as to turn out Sir John Hay?—Yes; Sir John Hay said that him and me would be of the same way of thinking in a very short time; my answer to that was, "I did not think so;" he said, "that he would keep the county, or contest it till the year 1841 or 1842, and that by that time probably some other young gentleman would have finished his travels to relieve him." I was a little offended at that and said, "Sir John, we must buy property to make votes, and turn you out," or "swamp you," or something to that effect.

11306. Did you say that to Sir John Hay with the intention of doing it?—Not in the least; I merely said it in fun.

11307. Having said that so immediately after Mr. Graham and Mr. Gibson Craig had left the house, do you feel confident you did not say it in such a way

as

as to leave it to be inferred that it had been the subject of conversation with them? *Mr. J. Macintosh.*
—I should think not.

11308. You are quite certain you never had any such conversation with them? *13 June 1837.*
—Quite certain.

11309. Lord *Stormont.*] When did Mr. Carmichael apply to you for your support?—He never did apply to me for my support.

11310. Has he ever applied up to this time for your support?—No, he has not.

11311. Did you ever offer him your support?—Sir Thomas applied to me.

11312. When did Sir Thomas apply to you?—I think in the month of August 1835.

11313. That was the month preceding this conversation?—Yes.

11314. Had you any idea that those gentlemen were coming to your house, Mr. Gibson Craig and Mr. Graham, before they did arrive?—I invited Mr. Gibson Craig to breakfast with me on that day.

11315. And you invited him the day before?—No, the Saturday before, which would be about the 11th or 12th of the month.

11316. Was it by a note or word of mouth?—Verbally.

11317. Where did you meet him?—I dined with him in the neighbourhood, and drove him up as far as my gate in my gig; his servant accompanied us, and then he got into his own gig.

11318. Had you any conversation with him at that time in regard to the election?—During that evening?

11319. Yes?—Not that I recollect.

11320. Are you quite certain that you had no conversation at that dinner, or during that drive, with Mr. Craig, on the subject of the election?—I am not certain.

11321. Had Mr. Gibson Craig ever been at your house before?—Never.

11322. Had you or not lived on terms of intimacy or friendship with him previous to this time?—I had not; I was not introduced to him till a short time before that.

11323. For what reason did you invite him to your house?—I had no reason for it; he told me he was to return on the Tuesday following, and I asked him to call and breakfast with me.

11324. *Chairman.*] Did your house lie in Mr. Gibson Craig's way going from Castle Craig to Edinburgh?—Directly; it is six or seven miles from Castle Craig and between that and Edinburgh.

11325. Mr. *Horsman.*] You asked him to breakfast with you on his way home?—Yes.

11326. *Chairman.*] Did you conceive it would be a convenience to him to stop at your house on his way home?—I am not certain of what my motives were.

11327. Lord *Stormont.*] When did you invite Mr. Graham to your house?—I had met Mr. Graham several times before; I did not invite him particularly that day; he had a general invitation.

11328. Did he come with Mr. Gibson Craig?—Yes.

11329. Where did they come from that morning?—From Castle Craig, I believe.

11330. Had you had any conversation with Mr. Graham, previously to that day, with regard to the election?—Not that I remember.

11331. Had you had no conversation whatever with regard to the state of the politics in the county of Peebles, previously to that day, with Mr. Graham?—No, I do not think I ever had.

11332. Was the subject of the state of the county never discussed, either by you, or in your presence, during the whole time that those two gentlemen were in your house?—No.

11333. No allusion whatever made to it?—There might have been in the other room, when I was with Sir John Hay; Mr. Graham, I believe, was in the dining-room, when I might have been speaking to Sir John Hay.

11334. *Chairman.*] Had you any conversation with either of them, after Sir John Hay and Mr. Robinson left you?—Yes, with Mr. Graham only.

11335. Lord *Stormont.*] When Sir John Hay called upon you, did he immediately begin a conversation with you as to the state of the county?—When I went in to Sir John Hay, he asked me why I had not dined with him; my answer was, "I never dine with any gentleman who had not invited me," and then, I

Mr. J. Macintosh. believe, he mentioned that it was not his fault, but some others of his party, who had omitted to invite me, or something to that effect.

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11336. Had you been on intimate terms with Sir John Hay previously to this?—Yes.

11337. Had you given him your support on former occasions?—Never.

11338. Had he applied to you on former occasions for your support?—He called upon me when first I went to the county, which was just before the election, and I told him distinctly that I would not support him, but I would oppose him as much as in my power lay.

11339. What year was it?—1832, I think.

11340. Did you tell Sir John Hay that those gentlemen were in the other room?—Yes.

11341. Did he ask you for what reason they had come there?—No, he did not.

11342. Did he ask you whether they had been canvassing you?—No.

11343. Did he ask you any thing with regard to their plan of operations?—No, he did not.

11344. Do you know a property of the name of Hallmire?—Yes.

11345. Was that property for sale at this time?—Yes.

11346. What sum did Mr. Gordon ask for it?—I am not certain.

11347. About what sum was it supposed to be worth?—About 20,000 *l*.

11348. Was there any conversation, with regard to this property, held in your presence, or in which you took a part on that day?—Between me and Sir John Hay?

11349. Between you and any body?—I do not recollect.

11350. If there had been any conversation, should you have recollected it?—I might not have recollected it.

11351. Did Mr. Gibson Craig or Mr. Graham ever, at any time, propose to you to make life-rents upon your estate?—Never.

11352. Did any other person ever propose to you to make life-rents upon your estate?—Yes, I have been asked.

11353. By whom?—Dr. Renton.

11354. By any other person?—No.

11355. At what time did Dr. Renton apply to you to make life-rent votes?—I am not certain of the time; I do not think he ever applied to me to make fictitious votes; he asked me if I would sell a part of my property to make votes.

11356. When did this conversation take place between Dr. Renton and you?—I think it likely it took place before 1835, or about that time.

11357. How much of your estate did he propose to you to give up for this purpose?—For one vote.

11358. Were you to sell the fee?—I never entered into any terms; I gave him a direct refusal at once.

11359. What was his proposition?—I am not certain of that either.

11360. Was that conversation previous to the visit of Sir John Hay?—Yes.

11361. In your conversation with Sir John Hay, did you allude to the proposal that had been made to you by Dr. Renton?—Yes, I believe I did.

11362. Are you sure that that was the only proposal ever made to you to sell part of your estate for the purpose of making votes?—Yes; I am certain that no other person but Dr. Renton ever made any proposal to me.

11363. And that only for one single vote?—I am not certain of that.

11364. Can you state to the Committee what the exact proposal was of Dr. Renton?—As near as I recollect, he asked me to give a neighbouring gentleman a vote upon Lamancha, and that he would give me one in the county of Edinburgh; the same gentleman; he might have spoken to me about others, but that is the only one I recollect distinctly; he is my family doctor, and is very often at my house.

11365. Are you sure he did not ask you to make more than that one vote?—No, I am not.

11366. He may have applied to you to make several?—He may have applied to me to make another, but I think not more than two.

11367. What was the other he applied to you to make?—The other gentleman?

11368. Yes?—He never mentioned any other name to me.

11369. Did you state to Sir John Hay you had refused the proposal of Dr. Renton?—Yes; I stated that I had refused to make votes on Lamancha.

11370. Did

11370. Did you state to Sir John Hay any reason for having refused to sell your property for the purpose of making a vote?—I am not certain of that. Mr. J. Macintosh.

11371. Had you any conversation with Sir John Hay, as to the impropriety of making votes of this description?—Yes. 13 June 1837.

11372. State the substance of the conversation you had with Sir John Hay?—Either Mr. Robinson or him said something on that subject, and in answer, I said, that my opinion of them was, that they would only give business to gentlemen learned in the law, or something to that effect.

11373. What answer did they make to that observation of yours?—I do not recollect.

11374. Was that the whole of the conversation that passed upon that subject?—I believe that is the best part of it.

11375. Did you state that you thought it wrong to make these votes?—Yes.

11376. Did you complain to Sir John Hay of any person having made these votes?—I do not think I did.

11377. Did you state that it was an objectionable system into which they were entering?—Yes, I think I might have said that, but I am not certain.

11378. Did you allude to any person having made a vote of this description?—I do not recollect.

11379. Did you know of any persons having made any votes of that kind?—Yes, I had heard of some.

11380. Of whom?—I had heard of the Duke of Buccleuch making some about Dalkeith.

11381. Did you allude to that?—I think it is likely that I did.

11382. Did you allude to any having been made in the county of Peebles?—Any fictitious votes?

11383. Any life-rent votes?—I do not recollect.

11384. Did you say any thing to Sir John Hay about this property of Mr. Gordon's of Hallmire?—I think it is probable I might have said something about Mr. Gordon's property. A

11385. Can you recollect what you said with regard to it?—No; I do not recollect; I think it is likely that I stated I heard it had been sold to Sir Thomas Carmichael, part of it, or something of that kind; I think I might have stated that.

11386. Had any part of the property been sold at that time?—No, it had not.

11387. Then how could you have stated it had been sold?—I might have stated that I heard part of it was sold to Sir Thomas; I recollect having heard a part of it was sold, and I might have stated that to Sir John.

11388. It was a mere report?—A mere report.

11389. What part of that property had you heard, at that time, had been sold to Sir Thomas Carmichael?—A lot on the south side of the turnpike-road.

11390. What name did it bear?—Upper Hallmire.

11391. Did it bear any particular name?—Only Upper Hallmire.

11392. Sir Thomas Carmichael has since purchased it?—No, he has not.

11393. What was the nature of the report with regard to this sale of the property; was it that Sir Thomas Carmichael had bought it for political purposes or not?—Yes, it was that he had bought it for political purposes.

11394. For the purpose of cutting up into life-rents?—Yes.

11395. Try and recollect if you cannot state to the Committee positively that you had a conversation with regard to this property with Sir John Hay?—I am not positive upon that point; I think, from the short time Sir John Hay was with me, we could not have said much upon that subject; he was but a very short time in my house.

11396. Were you ever asked to purchase part of that property of Hallmire?—Yes; Mr. Dykes has asked me to buy it for him.

11397. Is he the only person that ever asked you to buy it?—Yes, and I offered 18,000*l.* for it.

11398. Was that previous to this conversation?—After this conversation, I think, but I am not certain of that.

11399. Did Sir Thomas Carmichael ever apply to you to join with him in the purchase of this property?—Never; I was employed to offer that money for this property by Mr. Dykes, who is now in London, and lives in London.

11400. Had this gentleman any connexion with the county of Peebles?—None whatever.

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11401. *Chairman.*] Or with Sir Thomas Carmichael?—No; he is a private friend of mine, and my agent in London.

11402. Mr. *Horsman.*] Was there any political object to be gained by him in buying the estate?—None whatever.

11403. It had no relation to politics?—Not in the least; he wished to have a residence near me, being an old friend, and he told me to offer 18,000*l.* for it for him.

11404. Lord *Stormont.*] Was that for the whole of the property?—Yes, the whole of Hallmire.

11405. *Chairman.*] You alluded to a report of Sir Thomas Carmichael having bought a part of that property; was that erroneous, or was there any foundation for it?—It was erroneous; there was no foundation, so far as I know.

11406. Lord *Stormont.*] Had he made an offer for it?—I do not know.

11407. Might he have made an offer, and you not know it?—If he had done so, I think it is likely I would have known it from Mr. Gordon, being my friend and neighbour.

11408. Were you registered at that time upon the whole of the property of Lamancha?—Yes.

11409. What is your qualification now upon which you are registered?—I am registered upon my house, garden and park only.

11410. What were the reasons that induced you to change the qualification upon which you wished to be registered?—That I might be at liberty to counteract the efforts of my neighbours, if I thought of doing so.

11411. That is, that you might be able to sell part of your property in life-rents?—Yes.

11412. You considered it highly improper in your neighbours making those votes, did you not?—Yes.

11413. Do you consider that it is unjustifiable in any person to make votes of this description for political purposes?—To make fictitious votes?

11414. To make life-rent votes?—Yes, life-rent votes.

11415. Do you think there is the same impropriety in one person making them as in another?—Yes, I do.

11416. You stated just now, you were almost ashamed of having made life-rent votes; do you consider that your neighbour having acted with impropriety, is any justification to you to do that of which you are almost ashamed?—I do not thoroughly understand the question.

11417. You stated just now, you were almost ashamed of having made life-rent votes; do you consider that your neighbour having acted with impropriety, is any justification to you to do that of which you are almost ashamed?—No, I do not consider that it is any justification, but I considered myself obliged to do it in self-defence.

11418. Do you consider the votes you have made fictitious?—Yes, I do.

11419. For what reason?—Because I have not received value for them.

11420. You have received no value for them?—I have received a bill, which I am satisfied with, if that is called value.

11421. Do you ever expect those bills to be paid?—If they should ask me for the rental, of course I will ask them for the purchase-money.

11422. Are the terms upon which you have made these votes, that they should not ask you for the rental?—I believe there is nothing entered into in that way; I left it all to my agent.

11423. Have you given up the land wholly to those persons?—No.

11424. Do they exercise the rights of property upon it?—I should suppose not; the land is let.

11425. Has the land been let since you have sold these life-rents?—Before.

11426. Whose tenant is the man in occupation of the land now; is he your tenant or the tenant of the life-renter?—He will pay me the rent.

11427. He considers you as his responsible landlord?—Certainly.

11428. Is there any interest upon those bills?—I am not certain.

11429. Did you see the terms of the agreement which was made by your agent?—No, I do not think I did; one of these gentlemen is my brother-in-law, and he is residing on the property.

11430. Was there any communication made to the tenants about this life-rent?—Yes.

11431. For what purpose was it made?—I do not know for what purpose.

11432. Who

11432. Who made that communication?—I did; I suppose it was because it was necessary. Mr. J. Macintosh.

11433. Did you tell the tenants still to continue to pay the rent to you?—I wrote a note to the tenant, stating I had granted two life-rents upon the property; and that was all that passed between me and him; I showed him some papers I had got in my hand; I do not know what they were; I suppose the dispositions. 13 June 1837.

11434. Has the tenant paid his rent to you since that time?—It has not become due; those votes were only made some time in January last, and they are not registered; in saying I had not received value for one of these votes, I should state, I have money in my hands belonging to my brother-in-law.

11435. Has he given you a bill?—Yes, he has given me a bill also.

11436. You do not expect that this bill will ever be taken up?—I do not think it will.

11437. Do you expect that your brother-in-law will claim the rental?—Certainly not.

11438. Or the other votes you may make?—Certainly not; I do not expect that he will.

11439. The tenants will pay the money to you?—Yes; the fact is, I do not know whether they will claim any thing or not.

11440. Is that the case with the other life-rents that have been created in the county?—I can only speak of my own, and that very imperfectly.

11441. Do you know to whom the tenants pay their rent, in the case of the other life-renters in the county of Tweeddale?—I do not know.

11442. *Chairman.*] Did you direct that your votes upon your property should be made in the same manner as the votes had been upon the other estates in Tweeddale?—Yes.

11443. Your agent was to conduct the transaction in the same manner?—Yes, I left the matter entirely in his hands.

11444. And you do not know any thing more than you directed it to be done as it had been done in other cases in the county?—Nothing more.

11445. Did you ever look into the papers or conveyances?—I might have looked at them, but I do not think I ever read them.

11446. Had you any understanding with them, that they were not to exact the rents if they were entitled to receive them by law?—Nothing of that kind.

11447. Had you any understanding with the persons receiving them, that the tenants were not to pay the rents to them, if they were bound by law to pay them to them?—No, I think it is likely that I told the tenant when he asked me something about it, that he was to pay the rent to me.

11448. If he was to pay the rent to you, were you to pay it over, or what was to become of it?—Indeed, I do not know any thing about that; I should think not.

11449. If you received these bills, and the other parties claimed their right under the life-rent, did you consider yourself entitled to exact payment of the bills and interest?—I do not understand the matter of interest at all.

11450. Did the bills bear interest?—I am not certain.

11451. If the bills were granted for certain sums, and bore interest, and the parties claimed on these life-rents, do you consider yourself entitled to demand payment of these bills and of the interest which should be due upon them, or not?—Yes, I should demand payment of the bills, and interest also.

11452. *Mr. Horsman.*] Do you mean, whenever these gentlemen claimed their franchise, and were put upon the roll, you would make them pay up these bills?—No.

11453. At the time these bills were granted, you had no direct intention of calling for that payment?—None, whatever.

11454. And you had no intention of giving up the rent to those parties?—No.

11455. You intended it to be a transaction just to qualify them to be put upon the roll?—Yes.

11456. And you did it, conceiving that to be the nature of the transaction by which qualifications were given upon other properties in Peebles-shire?—Yes.

11457. *Lord Stormont.*] Is that the nature of the transaction in any other cases but your own?—I do not know.

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11458. Is it, or is it not?—I do not know.
11459. *Chairman.*] Do you know of any transaction in the county of Peebles similar to your own?—I know there are a number of fictitious votes.
11460. Do you know of any other case in the county of Peebles similar to your own?—No, I do not know of my own knowledge.
11461. Mr. *W. Campbell.*] Do you know the circumstances of any other case?—No.
11462. Mr. *E. Buller.*] Would it be likely, if any gentlemen on the other side had entered into transactions similar to your own, that they would tell you?—It is not likely at all.
11463. Mr. *Horsman.*] Have you any doubt that they are of a similar character?—I believe them to be of a similar character.
11464. Have you ever heard it doubted that they are of a similar character generally?—Never.
11465. Lord *Stormont.*] Are there any life-rents in Peebles upon which there are no bills, and upon which cash has been paid down?—Not to my knowledge; I do not know any thing about it.
11466. Mr. *Horsman.*] Have you attended the Registration Courts?—Only once.
11467. Were there a number of claims for life-rents put in upon that occasion?—Yes, a great many.
11468. Did you hear the evidence given about them?—Some of them.
11469. Were any of them paid for by cash, or was it by bill?—I am not certain of that.
11470. Was not that part of the evidence?—I only remained during the time my own name was called over; I went to see if I was inrolled myself, and I remained a very short time.
11471. Lord *Stormont.*] Are you a life-renter in any other county?—Yes.
11472. Are you registered as a life-renter in any other county?—I am not registered as yet; I expect to be so; if this system continues, I shall have one in each county in Scotland near my residence.
11473. At this next time?—As soon as I can get them.
11474. *Chairman.*] Have you any thing further to communicate to the Committee?—No.

Mr. *Alexander Graham*, called in; and Examined.Mr.
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11475. Mr. *Horsman.*] YOU are a friend of Mr. Gibson Carmichael's?—Yes.
11476. You reside in Lanarkshire?—Yes.
11477. Are you a proprietor there?—Yes.
11478. Were you in Peebles-shire in 1835, during Mr. Carmichael's canvass?—I was.
11479. Are you acquainted with Mr. Macintosh, of Lamancha?—I am.
11480. When did you become acquainted with him?—I became acquainted with him, I think, in September 1835.
11481. Do you recollect paying him a visit in that year?—Yes.
11482. Do you remember in whose company you paid it?—Yes, Mr. Gibson Craig's.
11483. Tell us the circumstances that led to your paying him that visit?—The circumstance which led to my paying that visit, was simply this: I was introduced to him a few days before, and he said, "I shall be happy to see you before you leave the county;" I said, I should be happy to call upon him; the night before I did visit him, Mr. Gibson Craig, upon bidding good-bye to Lady Carmichael, said, he should not see her in the morning, because he was going off to breakfast by invitation to Lamancha; I said, "Mr. Craig, how are you travelling?" he said, he had a buggy; I said then, "If you will let your servant take care of my horse, I shall go with you;" and I went with him.
11484. Mr. Gibson Craig was on his way that day from Castle Craig to Edinburgh?—Yes, to Riccarton.
11485. And Mr. Macintosh's house was on his route?—Yes, six or seven miles on his way.
11486. You went with him to breakfast?—Yes.
11487. Did you go on with him after breakfast?—No, I came back to Castle Craig.

11488. Had

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11488. Had that visit at all any connexion with the political matters of the county?—It had no connexion with furthering political matters in the county; it had this connexion with the political matters, it was after a political dinner.

11489. Had it any thing to do with forwarding Mr. Carmichael's interest?—That was not part of my object.

11490. Was it made part of your business when you got there?—Not at all.

11491. Had you any private conversation with Mr. Macintosh on that occasion?—Oh, a great deal.

11492. Of private conversation?—Yes, conversation he and I had together, *solus cum solo*.

11493. That was after breakfast?—Yes.

11494. Tell us what took place on that occasion?—I arrived there with Mr. Gibson Craig; I was unexpected, and as a proof that I was, there was no cup for me, and the bell was rung to bring a cup and plate for me, and all that sort of thing; at the breakfast there were present Mrs. Macintosh, whom I had never seen before, and two young ladies, Mr. Macintosh, Mr. Craig and myself; that formed the breakfast party; I do not recollect any other person being in the room; we sat a good while at breakfast, and talked of a hundred things; I do not think there was any thing political, or at least, as far as politics were concerned, it was the general topics of the day.

11495. After breakfast, what passed?—We sat a good while at breakfast, talking over a good many things; when we were in the breakfast-room, we saw Sir John Hay and a gentleman with him arrive in an open carriage with post-horses; then Mr. Macintosh left the party in the breakfast-room and went out; of course he went to Sir John Hay in the drawing-room, and in a short time he returned, and Mr. Craig and I went with him to the drawing-room, where Sir John Hay was, and a gentleman with him, who, I believe, was his agent, Mr. Robertson.

11496. Previously to Sir John Hay's arrival, had you or Mr. Gibson Craig had any conversation whatever with Mr. Macintosh, except what took place at the breakfast table?—None whatever.

11497. Had you any conversation as to any mode by which you could forward Mr. Carmichael's interest in the county?—None whatever.

11498. Was there any conversation whatever upon that occasion, regarding the making of votes in order to increase his influence?—None whatever.

11499. Will you tell us what occurred after you went into the room where Sir John Hay was?—There was an interchange of civilities between us, and nothing else; I did not speak a word myself.

11500. Did you stay after Sir John Hay went away?—Yes.

11501. Did Mr. Craig stay afterwards?—No, I think he was off before Sir John; we staid a short time, and did not wish to interrupt Sir John Hay, and Mr. Craig and I took a turn in the garden to see the place; we had never been there before nor since; at least I have not; and then I went to see Mr. Craig off in his buggy.

11502. After Mr. Craig went, you staid?—Yes, I went into the house, and staid till Sir John Hay went, and then went and walked for an hour with Mr. Macintosh.

11503. Had you any conversation about the politics of the county then?—No, nothing.

11504. Did he tell you what had passed between him and Sir John Hay?—He did not tell me any thing then; the only time he told me any thing about what passed between Sir John Hay and him was when he came to bring Mr. Craig and me into the room; and that was simply saying, that Sir John asked him why he had not dined with him at Noble-house last night; he had had a political dinner, and Mr. Macintosh said, he told him he never dined any where without being invited; and Sir John Hay was in a great fidget and fury about people not having been invited; he was furious about somebody not having invited all and sundry; in short, that was all.

11505. Did any thing pass while you were in the house that could justify or cause Mr. Macintosh to state that he had been asked by you to split his estates so as to make votes?—I am certain there was not neither on the part of Mr. Gibson Craig or myself, nor on the part of any of the ladies.

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11506. Have

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11506. Have you any reason to suppose he stated any thing of that kind to Sir John Hay?—He never stated to me that he did, and I was not present.

11507. Did you ever take any part in the politics of Peebles; did you assist Mr. Carmichael in his canvass?—Not in his canvass; I have been at all his political dinners; I was living at Castle Craig as a friend.

11508. Were you staying at Castle Craig that year?—Yes.

11509. Were you there a long time?—I was only once there that year previous to this time.

11510. How long were you there?—Twelve or 14 days.

11511. Were you there visiting as a friend, or to assist him in his canvass?—As a friend, to visit him upon his return from abroad.

11512. Do you recollect whether Mr. Gibson Craig paid him a long visit at the same time?—I remember Mr. William Gibson Craig being there twice when I was there.

11513. For a length of time?—The longest time was upon this very occasion; he came late one Saturday night about twelve or one o'clock, when we were going to our rooms, and left next Tuesday morning; we left together, and he was once there one night before.

11514. Did you or Mr. Craig take any part whatever in the canvass for Peebles-shire, except going as Mr. Carmichael's friends to the dinner?—I am certain we did not; we were always together, as we happened to be those who knew each other.

11515. You became acquainted with Mr. Macintosh two or three days before the breakfast?—Yes, it could not be more than four days before; we had seen each other, but had not been introduced.

11516. If it had been necessary to get Mr. Macintosh to take such a step as to split his estate, you were not on such a footing as to be the person to propose it?—I think it would have been a great impertinence on my part.

11517. Are you a voter in the county of Peebles?—No, I am not.

11518. Have you never been asked by Mr. Carmichael, or any of his friends, to take a vote in the county?—No, it was never even hinted to me to do it by Mr. Carmichael, or Sir Thomas or any of his relations.

11519. You know that there is a great anxiety in Peebles-shire to make votes, and that parties are creating votes in great quantities?—Yes, I have talked about it, because I recollect after that very day that you are alluding to, on the Thursday, Sir David Kinloch was leaving Castle Craig at that time, and I travelled with him to Edinburgh; that was my easiest way to go to my part of Lanarkshire, and we were talking about this thing, of making votes, and he and I exactly agreed upon the subject; he said, "Although Mr. Carmichael is my brother-in-law, I will not have a vote in Peebles-shire, I consider it so utterly wrong;" and I said, I was quite glad to meet with one of my own opinion; for though Mr. Carmichael was my friend, and I wished him to be the Member, and wished well to my party, I would not have a vote.

11520. Do you know whether Sir David Kinloch is a voter of that county now?—I do not know whether he is or not now; he was not then, but from the strong opinion he expressed, I would bet he is not now.

11521. He is Mr. Carmichael's brother-in-law?—Yes.

11522. And a gentleman of large fortune in East Lothian?—Yes, he is.

11523. Did Sir David Kinloch say he had had any application at that time to take a vote in the county?—He did not say that.

11524. Have you a vote in any other county but Lanarkshire?—Renfrewshire.

11525. How did you acquire that vote?—My father gave me an estate there.

11526. You are a proprietor there?—Yes.

11527. Have you had applications to take votes in other counties?—Yes, in Stirlingshire; but I refused these too, although I might have a reason for taking one; as my brother, who is older than myself, has an estate there, and I am the next heir of entail.

11528. Have you had applications made to you to procure votes in particular counties, where you have had an interest in the success of particular persons, and refused it?—Yes; I was asked to have one in Stirlingshire, and refused, notwithstanding I had a natural connexion with the county; I was also once asked, some time after the period I am alluding to, if I had a vote in Peebles-shire, by some person or other; I remember once being asked to have a vote there, and

I refused

I refused point blank, having no property there, and no natural connexion with the county; I could not consent to do any thing to swamp the natural constituency of the county.

11529. Those were your opinions at the time you paid that visit to Mr. Macintosh?—Yes, they were.

11530. Lord *Stormont*.] Where was this political dinner where you mentioned you first made acquaintance with Mr. Macintosh?—I cannot tell you the precise dinner; I can tell you all the dinners that took place, and it was at one or other of them; there was one on the Wednesday, at a place called Broughton; there was another on Friday, at Linton; there was a third on Monday, at Inverleithing; and on Tuesday it was that I was at Mr. Macintosh's; it was one of those three days; it must have been on the Wednesday at dinner, I should say.

11531. Had you any conversation with Mr. Macintosh at the dinner upon political subjects?—None.

11532. At the dinner, or during the time that you were in the house together upon the day on which the dinner took place?—I remember the way I was introduced; it was just before the door, when going in to dinner; we were merely introduced; we were late, and he had just time to say, "I hope you will come and visit me before you leave the county."

11533. Was it an invitation merely to breakfast, or to stay at the house at Lamancha?—It certainly was not to breakfast; it certainly was not to dinner; it certainly was not to supper; it was simply to come and see him, and it certainly was not to stay; it was merely to come and see him; I might have done which I chose.

11534. Was this a numerous dinner party where you met Mr. Macintosh?—Yes, numerous for that part of the country, and the size of the county.

11535. About what number?—Seventy or eighty people.

11536. Did you sit near Mr. Macintosh at dinner?—No; observe, I am not saying he was at that dinner; I cannot tell you which of those dinners it was; I am speaking of the Broughton dinner; that was a dinner of about 70 or 80, and I think it was there; that is my belief; I am certain I did not sit near him; I could not have done it.

11537. Had you any conversation with him upon political subjects prior to coming to breakfast with him?—I do not remember any conversation with him whatever on politics; I did not know him; it was merely just such an introduction as you would expect a person to get on such an occasion in two or three words, and separating immediately.

11538. Did any conversation ever take place in your presence, in regard to making votes in the county of Peebles, prior to this visit to Lamancha?—Never.

11539. Was the subject of fictitious votes ever matter of conversation in your presence?—With Mr. Macintosh?

11540. Not with Mr. Macintosh, but any person at Castle Craig, prior to this visit?—I do not recollect having any conversation with any one about fictitious votes; I may have had it; I simply say what I recollect; but I do not recollect having had any conversation with any one about fictitious votes, except Sir David Kinloch.

11541. Mr. *Horsman*.] Had you any conversation with Mr. Gibson Craig upon the subject on the morning you drove together?—No, I am quite certain we had not, because I knew his mind so well; I am quite certain of it.

11542. Lord *Stormont*.] Sir James Gibson Craig is Sir Thomas Carmichael's and Mr. Carmichael's agent?—I do not know that; I have no means of knowing it; if I was to speak from appearances, I should say that he was not in politics; I happened to be there during the Registration Court, and I used to go with Mr. Carmichael to see what was going on; I went to see particularly whether they put on six or seven sons of one gentleman upon his estate, it remaining his own all the time; I went to see how they would manage it; and it was not Sir James Gibson Craig, or any of his people, who acted for Mr. Carmichael; I know nothing about his private agency; I think it likely, because they are related.

11543. Was there any conversation during the whole of the time at breakfast, with regard to the state of the county of Peebles?—I remember no conversation, except what I have already told you, in reference to the state of the county of Peebles, the feeling prevailing at those political dinners, and what sort of a Member Mr. Carmichael would make, provided he were returned.

Mr.
Alexander Graham.

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11544. Was there any conversation, at breakfast, with regard to any property in the neighbourhood that was to be sold?—None, that I heard.

11545. Had you any conversation with Mr. Gibson Craig as to any property that was to be sold?—None, because I did not know of any property that was to be sold in Peebles-shire; the only property that I heard of being to be sold was afterwards, and six or seven miles from Castle Craig.

11546. Did you ever hear from any friend of Mr. Carmichael, or from Mr. Carmichael himself, it would be necessary to make votes to counteract the exertions on the other side?—I cannot say whether I ever did or not; I think it very likely I may have heard it; I cannot say; I should think it very likely to have been said in my presence, some time or other.

11547. Was the manner of doing so ever discussed in your presence?—Never.

11548. Did Mr. Gibson Craig speak in private to Mr. Macintosh, on that morning, previous to Sir John Hay's arrival?—I am as certain as I can be at this distance of time, that I was always with Mr. Gibson Craig when Mr. Macintosh was with Mr. Gibson Craig; I am certain they were never alone together; indeed, I am not sure we three were ever together alone, except in the passage, betwixt the room where we left the ladies and that where Sir John Hay was.

11549. Do you know that Mr. Carmichael has purchased property in the county for the purpose of making votes?—I was told he had bought the property, because I think his father always called him the laird of that property.

11550. Is it called Kilbucho?—I know there is a place called Kilbucho Mill; but I know nothing of it.

11551. Do you know that life-rents have been made upon properties that have been purchased either by Sir Thomas Carmichael or Mr. Carmichael?—I have heard it, but I do not know it; I have no occasion to know it.

11552. Mr. *Horsman.*] Have you any connexion with the county of Peebles?—Not a bit, except the pleasure of being at Castle Craig occasionally.

11553. The *Lord Advocate.*] You live in Lanarkshire?—Yes, 40 or 50 miles off.

11554. Lord *Stormont.*] Is your vote in Renfrewshire a vote upon life-rent?—No; I have an estate there; I have about 600 Scotch acres there.

Jovis, 22^o die Junii, 1837.

MEMBERS PRESENT.

Mr. Edward Buller.
Mr. Walter Campbell.
Mr. Fox Maule.
The Lord Advocate.
Sir T. Fremantle.

Lord Stanley.
Sir William Rae.
Lord Viscount Stormont.
Mr. Francis Baring.

MR. HORSMAN IN THE CHAIR.

Alexander Gibson Carmichael, Esq., called in; and Examined.

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11555. *Chairman.*] YOU are a proprietor in the county of Peebles?—Yes.

11556. And you have stood as candidate for the county?—Yes.

11557. Since the year 1835?—From June 1835 to the present period.

11558. You were well acquainted with the state of the constituency previous to that time?—Yes, I was; there never was any contest before 1835, and I never paid any particular attention to it; but when I commenced my canvass in 1835, I very soon became acquainted with the state of the constituency.

11559. And great additions have been made to the roll since the contest commenced?—Yes, very great.

11560. You yourself have made considerable exertions to increase the number of your supporters?—Certainly.

11561. Have you purchased any properties on which you have put voters?—Yes, I have.

11562. What was the first property you purchased of that kind?—The first property I purchased was East Sands Park, in the parish of Linton.

11563. And how many persons are inrolled on that property now?—Six.

11564. You

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11564. You purchased it solely for a political purpose?—Solely.

11565. Had any thing occurred in the county that made you purchase that property?—The practice of making life-rent voters had begun. Mr. Aitchison, a proprietor in the conservative party in the county, had put on seven sons of his, and at the same time he brought forward five other gentlemen totally unconnected with the county, but afterwards withdrew them. It was generally rumoured that Sir John Hay, the sitting Member, had applied to every gentleman on the conservative side, saying, that he would not himself continue the contest unless each of them supported him by putting at least one life-rent vote on his estate; and the rumour has been verified by the following registrations.

11566. How do you mean it has been confirmed by what has taken place at the registrations?—Almost every gentleman of the conservative party has put on voters, and disposed of portions of his property in a way totally unknown before.

11567. You made over this property that you purchased to six individuals who are now on the roll?—Yes.

11568. What was the nature of the transaction between you; how was the purchase-money paid?—All paid in cash at the time.

11569. Did they acquire it as proprietors, or did you give them the life-rent?—I gave them the life-rent.

11570. You stated that you made this purchase in consequence of what Mr. Aitchison had done in the first instance?—Yes.

11571. Did that proceeding of Mr. Aitchison's create any sensation in the country at all?—Yes, it created a very lively sensation; I may mention as one instance among others of the sensation that it created, that one farmer in our immediate neighbourhood, of the name of John Cairns, who, I had reason to believe, would have opposed me, on hearing of what Mr. Aitchison had done, came to my father, at Castle Craig, and volunteered his support to me, stating as his reason that it was on account (using excessively strong language) of Mr. Aitchison's proceedings.

11572. Was that the only case of batches of voters being made by your opponents previous to your purchasing that property?—Yes, the only one.

11573. What subsequent purchases have you made of the same kind?—I purchased shortly after the estate of Kilbucho Mains from Lord Medwyn, on which I put 21 life-renters.

11574. In what year was that done?—It was done, I think, about December 1835.

11575. How was that purchase concluded; how was it paid for?—They did not all of them pay in cash; many of them did; others by bills; some paid at the time the deeds were drawn up; I saw some of it paid when I signed my name to the deeds; other gentlemen paid shortly after, and they are all people of great respectability, who would be able to pay any day.

11576. Can you state what proportion paid in cash, and what proportion paid in bills?—I cannot state the exact proportion, but I believe about half of them; fully half of them paid in cash, I believe.

11577. Who draws the rents of these properties?—Mr. Cormack, who has a factory, from the life-renters.

11578. Though you conveyed these lands to these life-renters, do you consider yourself denuded of the property entirely; for example, who gives directions to the tenants?—I do always.

11579. As to all improvements and alterations?—Certainly; I have done so frequently.

11580. Then, still though the property is made over to these life-renters, in reality they exercise none of the rights of property on it?—None.

11581. Except that the factor appointed by them draws the rents?—Yes, that is the only right I know that they have.

11582. Do you consider that a really *bond fide* proprietorship, which they have acquired from you to those properties?—I have no doubt it is a legal transaction; but I confess I should be very much surprised if I saw them interfering in the management of the farm in any way.

11583. As to your own opinion of it, do you consider that it was a really *bond fide* transaction, or that it was an objectionable one?—No; I think it is most objectionable.

11584. In this respect, in still exercising the rights of property over these lands which you have conveyed to others, are you acting in a manner which is without

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precedent in the county?—We have followed as nearly as possible the method which was adopted by the Tories, in introducing these voters into the neighbouring counties.

11585. Have you any proof that they are still exercising the rights of property in the transactions with the tenants, where they have made conveyances of this kind?—I have every reason to suppose that they still do; I have no proofs, but I have every reason to suppose they do; I never saw any difference in the management.

11586. Have you created any joint tenancies since the Reform Bill was passed?—There are several cases of joint tenancy on my father's estate.

11587. Were those created for a political purpose?—No, I should certainly say not; I have drawn up a statement, a list of all the joint tenancies on my father's estate, which, if the Committee please, I will read aloud to them; there are dates and various things I should like to state.

11588. Is there not a case of four joint tenants put on one farm?—Yes, there is, they are not inrolled; one is dead, and the three younger brothers, if of age, will probably claim at the next Registration Court.

11589. What are their names?—Watson.

11590. State the circumstances under which they have been put in one lease?—The father, James Watson, was inrolled on the farm of Muirburn; he died, and as a matter of course his eldest son, Walter Watson, succeeded him, and was inrolled as tenant. In the spring of 1836, Walter, who at that time was in very bad health, came to my father and requested that his three younger brothers might be put in the lease; my father was very much against this, fearing lest they might afterwards regret it, and he did all he could to dissuade him from it; but he again some time after came to him with the same request, and my father at length complied. The reason assigned by the son for wishing so was, that they had always done so well together, and he feared if they were separated they might not go on so well. Shortly afterwards Walter, the eldest son, died, and consequently there is now no voter on the farm, but the three other brothers, if of age (I know the eldest son is, but I do not know whether the others are), will, in all probability, claim at the next Registration Court.

11591. Were those brothers put in at the request of the farmer, and against Sir Thomas Carmichael's wish?—Yes, certainly; he did all he could to dissuade them from it.

11592. What other joint-tenants have been made since 1835?—The cases of joint-tenancy on my father's estate are on the farm of Scotson, John Stewart, senior, and John Stewart, junior.

11593. When were these joint-tenants created?—The junior tenant, who is the second or third son, was assumed into his father's lease in 1834, before any contest. There are also on the farm of Blyth, James Ritchie, senior, and James Ritchie, junior; here the junior tenant is the second son, he was assumed into his father's lease in 1835.

11594. Subsequent to your starting for the county?—Rather before it; I did not start till June; another case is the farm of Ladyurd, of which James Somerville, senior, and James Somerville, junior, are the tenants; here the junior tenant is the second son, and I believe he was assumed at the commencement of a new lease.

11595. In what year?—In 1835. Another case is on the farm of Skirling Mains; here the junior tenant is the second son; he became joint-tenant in 1834, a year before the contest commenced.

11596. Tell us the cases that have been created since the contest commenced in the county?—Somerville and Ritchie have been.

11597. Tell us any other cases that have been created since the contest began?—On Skirling Mill, John Smith, senior, and John Smith, junior.

11598. In what year were they created?—They inrolled in 1836, and consequently must have been created in 1835.

11599. Were those joint-tenants created for a political purpose?—I should say not; the tenants in almost every case came to my father and requested it; the proposition proceeded from the tenant, and not from my father; I have no doubt that many of them were induced to do so from affection to my father, most of them being old tenants; he did not make the request first.

11600. Lord Stanley.] In this case are the tenants *bonâ fide* in occupation, and living with their relations?—In every case; there is one case of John Gibson, whom I mentioned before; they are inrolled on the farm of Skirling Mains; John Gibson,

Gibson, junior, has also a farm himself in Lanarkshire, Spittal, but, although it is in a different county, it is merely separated from his father's farm by a brook, and he, being an unmarried man, lives as much in his father's house as in his own house, and does as much of the business of one farm as the other; they join.

11601. The Committee are not to understand that you consider these fictitious or otherwise than *bond fide* votes, having a real interest in the soil in right of which they claim their qualification?—I think so, certainly.

11602. *Chairman.*] You yourself are a life-renter in the county of Peebles?—Yes, I am.

11603. What is the nature of your qualification; what is the amount of it?—Two hundred pounds.

11604. How did you acquire it?—I have the disposition here; my father, on my coming of age, in the year 1833, wished to settle an allowance on me, and he therefore adopted this mode of doing so; he gave me the life-rent of a farm on his estate in Peebles-shire, and also one to the same amount in Mid Lothian, and I have a vote on each of these farms.

11605. Did he give you a farm in each county to the extent of 200*l.* a year?—I think the farm in Peebles-shire is just 200*l.* a year; in Mid Lothian it is just about it, but it depends on the price of corn.

11606. *Lord Stanley.*] And you *bond fide* derive the profits issuing from those two farms?—Yes, I do.

11607. *Chairman.*] Do you intromit with the tenants?—Yes, I have done so frequently.

11608. Who communicates with the tenants regarding improvements?—I have spoken myself with the tenants in Peebles-shire, within a very short time, with regard to improvements.

11609. You have been the person to whom they look for instruction since that disposition has been made out?—Certainly; they are in the habit of calling me their laird.

11610. *Sir T. Fremantle.*] Have you paid the expenses of the repairs?—Being a good deal abroad, I have not much attended to the accounts; they have been done by the agent.

11611. *Chairman.*] Have you any other votes besides those in those two counties?—I have no other votes at present.

11612. During the year 1835, do you remember Mr. Gibson Craig being on a visit to you at the time you were canvassing?—Yes, I do.

11613. Did he take any part in the politics of Peebles-shire as far as canvassing went?—He attended several dinners that were given, the first to me; and he attended two dinners that I gave to the electors, for the purpose of explaining my political sentiments.

11614. Did he assist you in your canvass?—Decidedly not; I do not remember his canvassing any one.

11615. His visit to you was not with a view to assisting you in your canvass in that county?—Certainly not.

11616. Do you remember his visiting you at the same time that Mr. Graham, of Limekills did?—Yes, I do.

11617. Was his visit to you of the same nature, a friendly visit, or to assist you in your canvass?—Mr. Graham is a friend of mine, and came to see me on my return from the continent.

11618. Mr. Gibson Craig is a relation of yours?—Yes, a second cousin.

11619. And their visit to you on that occasion you recollect was apart from politics, and solely visiting you as a friend and relation?—They attended several of the political meetings, but I do not think they canvassed any one.

11620. They did not visit you with that object?—No.

11621. At the period of their visiting you, was there any idea in your party of taking any such step as the splitting of properties into small 10*l.* portions for the sake of increasing your interest in the county?—No.

11622. Was any such idea ever started or thought of?—I recollect Mr. Shaw, who was my counsel in the Registration Court against the claims of the Messrs. Aitchison, after a decision had been given against those claims in Peebles, he said he thought it was not improbable that the decision might be given in their favour, at Jedburgh, and that it was a prelude or commencement of the same proceedings on a much larger scale through the county, and he then advised me to have recourse to the same mode of creating votes.

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11623. At that time was it contemplated by your party to follow that advice?—No, I do not think so.

11624. Do you know Mr. Macintosh of Lamancha?—Very well; he is a near neighbour.

11625. Did you ever hear of a proposal made to Mr. Macintosh that he should split up his property into 10*l.* votes?—Never.

11626. Do you think it likely that any such proposal was ever made to him by Mr. Gibson Craig or Mr. Graham?—I think it most unlikely; I think they would have mentioned it to me if they had done so; and besides, from their very slight acquaintance with Mr. Macintosh, I do not think they would have taken the liberty; I know very well both these gentlemen, particularly Mr. Graham, have again and again asserted to me their hatred at the whole system of making what they considered fictitious votes.

11627. Mr. Graham lives very near the county of Peebles, does he not?—About 40 miles.

11628. In the neighbouring county?—Yes.

11629. Do you know that he has not acquired a vote in the county of Peebles?—I know he has not.

11630. Have you any thing further to state to the Committee?—No; I think I have stated that I have no vote at present in any other county; and I may also state, that I am only waiting for a decision of the House of Commons whether this is a proper mode of proceeding or not. If the House of Commons decide that it is a proper and constitutional mode of making votes, I shall certainly conceive it my duty to take a vote in every county of Scotland that I have the least chance of arriving at.

11631. Lord *Stanley*.] What mode do you refer to as that which you consider left to the decision of the House of Commons?—Especially life-rent.

11632. Sir *T. Fremantle*.] You mean the same sort of qualification you possess in Peebles?—I think my qualification is different; I am so much connected with the county, being heir of entail to a large property in that county, residing there, and the property on which I claim being of the value of 200*l.* which I think is very different from a paltry 10*l.* vote.

11633. Why should not a person, if he has a *bond fide* qualification of 10*l.*, be as good a voter as you, who have a life-rent to the amount of 200*l.*?—I think if he is resident, he is as good a voter.

11634. Why do you conceive that residence is a qualification for an elector of the county?—I think it never could have been the intention of the Legislature, I am quite sure it never was, that the residents, as in the case of Selkirkshire, should be out-voted by the non-residents.

11635. Lord *Stanley*.] You do not mean out-voted, you mean out-numbered?—Out-numbered I mean.

11636. Mr. *W. Campbell*.] Are there not in some counties of Scotland, as well as elsewhere, certain local interests which the representative of that county is supposed to represent, as well as the general political feeling of the county?—Certainly there are.

11637. And do you conceive that the non-residents are likely to take so warm an interest or to be so well acquainted with the local interests of the county as those who are resident?—I cannot conceive so at all; I know of several gentlemen who have votes in eight or nine different counties.

11638. Lord *Stanley*.] Supposing I was to purchase an estate in fee in one of the counties of Scotland and never go near, would you on that account debar me from the right of voting in the county in which my property was situate?—I think, unless your property was to the amount of 50*l.* or 100*l.*, I could debar you.

11639. Do you find any distinction of that description taken in the Reform Act?—No.

11640. You are aware that the inquiries of this Committee are directed to ascertain how far the intention of the Reform Act has been frustrated by the creation of fictitious votes?—Yes.

11641. Then, in the alterations you suggest, you suggest alterations avowedly at variance with the intention of the Reform Act?—I do not think at variance with the spirit of the Reform Act.

11642. But of a nature consistent with which there is nothing in the Reform Act?—Yes, I think so.

11643. *Chairman*.]

11643. *Chairman.*] Do you suggest these alterations on reflection, or are you giving your opinion on a point on which you are now asked for the first time?—I am giving my opinion hurriedly; I have not looked at the subject in all its bearings, and, not being a lawyer, I do not know exactly what the provisions of the Reform Bill are.

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11644. *Lord Stanley.*] Then you have not maturely considered whether in your anxiety to avoid some possible abuses you might not do injustice to persons who were *bonâ fide* qualified?—I think very few indeed would be unjustly treated if residence, unless the property was above 50*l.*, was required.

11645. Is this a hurried opinion, in the same way as the Chairman asked you before?—I have thought of it in my own mind before.

11646. *Chairman.*] Have you heard any opinion expressed by the resident voters generally on the subject?—I know the general feeling throughout the county on both sides of the question is against these aliens, as they call them; we thought of objecting to several Irish gentlemen, who had never been in Scotland, as aliens.

11647. The great majority of these life-rent cases in Peebles are paid by bill, are they not?—Almost always.

11648. That is a class of voters which can be created to almost any extent, as far as the unentailed property may go?—To any extent; there is a great deal of the property in our county entailed; consequently the proprietors of these entailed properties have no mode of doing the same thing, even if they were willing.

11649. When you state that persons are only waiting to see what is the step that the Legislature will take in consequence of this Committee, is it your opinion that these life-renters, who are paid for in the manner which you have stated, by bills, will be increased to a very great extent?—They certainly will; I think in all the smaller counties they will out-number the resident voters.

11650. Is that the mode by which you yourself intend to create any considerable addition to the roll?—I have not taken that into consideration; I think it is not improbable that I might.

11651. Is it the easiest mode of creating them?—I believe it is.

11652. *Mr. F. Baring.*] If Parliament were on this occasion to separate without this Committee presenting any report recommending a remedy, do you not think that would be considered as something of a confirmation of the legality of these proceedings of which you complain?—Not unless it was duly brought before Parliament; if Parliament were to decide that this was a proper and constitutional mode of increasing the constituency of the country, I should then take it as a decision that they were good.

11653. Do not you conceive that any neglect of Parliament in pronouncing against it would be held as a confirmation of it?—It would depend on circumstances; I think, in the present case, where matters are likely to be very much hurried in the close of the session, it would not be taken as a decision one way or another.

Mr. James Rose, called in; and Examined.

11654. *Chairman.*] YOU are a writer to the signet in Edinburgh?—Yes.

Mr. James Rose.

11655. You are partner with Mr. Donald Horne?—Yes.

11656. You have advanced sums of money to persons in the counties of Selkirkshire and Roxburghshire, in the purchase of properties on which they have afterwards been qualified?—Yes, I understand so; but I did not know it at the time.

11657. And you have taken securities over the properties for the money which was lent to them?—Yes, in my own name.

11658. This has been done in the counties both of Selkirkshire and Roxburghshire?—Yes.

11659. Has it been done in many cases in the county of Selkirkshire?—It has been done in two or three cases; three I think; there were three loans in the county of Selkirk that were made.

11660. Who were the parties?—A man of the name of Scott, 200*l.*; another of the name of Johnston, 200*l.*; another of the name of Macgregor, 150*l.*

11661. In all these cases have you got the property in security?—I have got a bond on each of the properties.

11662. Did you take an *enfeoffment*?—No.

11663. Was this money lent to them from a political connexion, in order to put them on the roll in the interest of your party?—No, certainly not.

11664. Was it your own money, or the money of one of your clients?—The money of a client.

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11665. Can

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11665. Can you tell us who the client was?—No, it was a lady; but I would rather not tell who it was; I do not wish it published.

11666. Was your client aware at the time to whom this money was to be lent?—I do not know that she was aware at the time of the precise individuals, but she was aware that the money was to be lent in small sums, because I consulted with her before doing it.

11667. Did I understand you to say that the lending of it had no connexion whatever with politics?—I had better explain how it happened; Mr. Smith of Kelso applied to us, stating that he had applications for loans of several small sums, to see whether we could assist him; Mr. Horne and I consulted together, and we agreed, if the securities were good, to lend these sums out of a sum of money belonging to a lady, in our hands, which had remained in bank upwards of six months, at a low rate of interest.

11668. Who is Mr. Smith of Kelso?—He is a writer there, and bank agent.

11669. Has he any thing to do with politics for the county at all?—Yes.

11670. Is he one of the agents for the same party?—He is one of the agents.

11671. Then when he applied for the money, did he merely say he wanted money in small sums, without specifying what purpose he wanted it for?—He did not specify it at the time.

11672. Were you not aware at the time how it was to be applied?—We were aware that the money was to be lent to those individuals, if the security was sufficient, not how they were to apply it.

11673. Were you not aware that it was to be lent to persons who were by that means to acquire a property by which they were to be put on the roll?—I certainly was not.

11674. On his application to you, did he make no allusion whatever to its being applied to political purposes?—No.

11675. Would it have been lent equally, if it had been for any other parties in that county, except the persons to whom it was lent?—Certainly, if the security had been good.

11676. Viscount Stormont.] Had this lady placed this money in your hands for political purposes?—No.

11677. Chairman.] At the time that Mr. Smith made the application you here say, he made no allusion whatever to its being lent for political purposes?—None.

11678. Did you immediately comply with his application?—Mr. Horne and I consulted together whether we might not get the money disposed of, the large sum I mentioned as being in our hands, by investing it, or part of it, in small sums.

11679. In the consultation between you and Mr. Horne, was any allusion made to politics?—No.

11680. Then, immediately on consultation, did you lend the money?—Immediately on that consultation we agreed to advance the money if the securities proposed were sufficient.

11681. Did you answer to that effect?—I am not very certain whether I wrote to that effect, or whether Mr. Horne saw Mr. Smith; I think I wrote.

11682. Then you heard again from Mr. Smith, I presume?—Yes.

11683. In his next letter, did he tell you what was to be the destination of this money?—I do not think there was any letter betwixt that and the lending of the money; whatever else passed must have been verbal.

11684. Do you know what did pass?—No, I do not; but I dare say that Mr. Horne would be very willing to serve our conservative friends in the county.

11685. Did you, after lending this money, learn that by means of it these parties purchased property in order to get put on the roll?—Some of them, not till recently; none of them, indeed, till this investigation commenced.

11686. How came the securities over the properties to be taken in your name?—Because it is a very usual practice; at least, it is not an unfrequent practice in taking securities to have them in the name of the agent; it saves trouble: there is another advantage attending it, that we can transfer them to another client, if the money is called in, without any expense to the borrower.

11687. In the course of your experience I suppose you very often lend money for clients, security being taken over the property?—Yes.

11688. Do you mean to say it is usual with you in those cases to take the security to yourself, and not to your client?—I should not say usual, but it is very often done; I have done it repeatedly.

11689. Previous

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11689. Previous to the last four or five years?—Yes, and without the slightest reference to politics whatever.

11690. You have done it repeatedly?—Yes, and without the slightest reference to politics.

11691. We understand it is an usual mode of taking securities over properties in Scotland?—I do not know that it is an usual practice, but it is not unfrequent with us to do it.

11692. Who has possession of the titles?—The parties themselves, in most cases.

11693. In these three cases in Selkirkshire?—I had the titles, but I returned them; one of those loans is paid up.

11694. When did you return them to them?—After I had prepared the bonds.

11695. You stated that this lady, when she put the money into your hands, did not intend it to be applied to any political purpose?—Most certainly not.

11696. Was she aware afterwards that it was applied to a political purpose?—I do not know of a political purpose; but she was aware how it was applied.

11697. Is she a lady that takes an interest in politics?—Not particularly; ladies now take more interest than they used to do.

11698. Is she a decided politician?—I think she is, but I do not know.

11699. A conservative?—Yes.

11700. Did she approve of the manner in which it had been applied when she learnt it?—Yes, she did.

11701. Do these answers apply both to the counties of Roxburgh and Selkirk?—Excepting so far as Mr. Smith is concerned, who has nothing to do with Selkirk, they apply to the whole.

11702. Mr. W. Campbell.] You stated to Scott, Johnson and Macgregor that sums had been lent?—Yes.

11703. Were these in the county of Selkirk?—Yes.

11704. There were other sums lent in the county of Roxburgh?—Yes.

11705. To whom were those sums lent?—David Meikle, 220 £.; James Currie, 180 £.; William Allan, 70 £., since paid up; Richard Muir and Allan Shankly, a joint bond, 300 £.; Peter Johnson, Ralph Kerse, Charles Hossack, 600 £., a joint bond. Hossack has since paid up his third; Allen Martin and John Ormston, 430 £. to the two; James Turnbull, Daniel Taylor, and George Taylor, 770 £. to the three; George Patterson, 100 £.; William Davidson and Alexander Anderson, 350 £., and 50 £. has since been paid up; George James Dickinson, 150 £.; Andrew Gray, 100 £. On all of these infeoffments were taken in my favour.

11706. The total sum is how much?—Three thousand three hundred and seventy pounds.

11707. Was the whole of this money from the same lady?—Yes, it was.

11708. You say she was not aware that this money was advanced for political purposes?—No, at the time she was not aware of it.

11709. Viscount Stormont.] Are all those persons on the register?—I do not know.

11710. Chairman.] The application for these loans was made by Mr. Smith of Kelso?—Yes.

11711. Who made the application for the loans which you lent in Selkirk?—Mr. Rodger.

11712. Did he state he wanted the money for a political purpose?—No, I am sure he did not.

11713. And you were not aware at that time that it was to be applied for such purposes?—No, certainly not.

11714. Have you any connexion with Mr. Rodger, except what was formed by Mr. Horne and he being both political agents for Selkirkshire?—I do not think it; I do not think we had any agency with him before that.

11715. Had you agency with Mr. Smith of Kelso before that?—Yes, I think Mr. Horne was a correspondent of his, even before I was in partnership.

11716. Had he, previous to that, been in the habit of requesting you to advance him money?—Never since I was in partnership.

11717. At the time this money was lent, you had no idea of its being lent in any manner for political purposes?—No, certainly not.

11718. Viscount Stormont.] Did you ever act as political agent in the counties of Roxburghshire and Selkirkshire?—Never.

11719. Chairman.] Not individually, but your house?—The business was nominally done by the firm, but Mr. Horne took the entire charge of it; it was

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matter of arrangement between him and me at the time he took those agencies, that I should attend to the other business, and he took charge of that.

11720. The agency for those counties is carried on in your office?—Yes, the part of it that is done in Edinburgh.

11721. Then, although you have not admitted that this money was lent for political purposes, did you not say that the lady became aware of its being lent in that manner?—She was aware of the parties to whom it was lent, but I do not know that she is aware of how they applied it.

11722. Are you aware now that the conservative interest in Roxburghshire was strengthened by the admission of those persons on the roll?—I have said that I am not aware they are on the roll.

11723. Are you not aware that some of them are on the roll?—The only parties that I know are on the roll are two, Richard Muir and Allan Shankly.

11724. You have no reason to believe that this money would not have been lent to any other party at that time apart from politics?—It would have been lent to any other parties at the time, on good security.

11725. Do you believe now that Mr. Smith applied to you for this money with any view of applying it to political purposes?—The only reason I have for believing so is, the discussion that has taken place here, and my being called here to give information on the subject.

11726. You take no charge or interest whatever personally in the political matters which Mr. Horne conducts?—I take interest, but I do not take any charge.

11727. I mean interest by interference?—No, none.

11728. You are quite ignorant of all transactions he conducts of this nature, with a view of forwarding the interest of his own party?—Almost entirely ignorant.

11729. May this money have been lent for a political purpose entirely without your being aware of it?—Most certainly; that is, the borrower may have had a political object in view.

11730. And may Mr. Horne have had a political object in lending it?—I think Mr. Horne would have communicated that to me if he had.

11731. Then your opinion is, that Mr. Horne had not a political object in lending it?—I am quite certain we would have lent it to any party of any politics whatever, if the security had been good.

11732. Have you lent any in any other county, besides these two, in the same manner?—Do you mean lately?

11733. Yes, recently, since the passing of the Reform Bill?—I have lent two sums in the town of Edinburgh in a similar manner, taking securities to myself.

11734. I mean any place where Mr. Horne takes charge of the politics of the county?—None.

11735. You acted as political agent in Caitliness?—I took charge of the last courts, or rather I assisted the country agent of Sir George Sinclair, in consequence of being called to the county on an objection to my claim.

11736. Did you advance any money to any persons in that county for the purchase of property?—No, none on mortgage.

11737. In those cases where you took infeoffments on these bonds, who paid the expenses of the infeoffments?—The parties.

11738. The parties themselves?—Yes.

11739. Was it charged against them, or did they all pay it?—I do not know; it was Mr. Smith who prepared them.

11740. You are not aware?—I paid none; the expenses are paid by the borrowers.

11741. Do you state that they were paid by the borrowers, or that you have no knowledge on the subject?—I believe, in point of fact, they were paid by the borrowers. In the Selkirk cases, where we prepared the bonds, we deducted the amount of expense from the sums advanced; and Mr. Smith also would naturally deduct it from the loans; that is the usual practice.

11742. These parties are all private clients of Mr. Smith, I presume?—I should think so; but I do not know that.

A P P E N D I X.

LETTER from Mr. Brodie to Mr. Fox Maule, a Member of the Committee,
dated Edinburgh, 19 June 1837.

SIR,

I HAVE heard with great regret that the Fictitious Vote Committee (Scotland), of which you are a Member, have it in contemplation to terminate the investigation in which they are engaged, without making any inquiry at all either into East Lothian, West Lothian, or the Metropolitan county. Feeling, as I do, a deep interest in the subject of the Committee's investigations, and being personally well acquainted with the progress of the fictitious system in the county of Mid Lothian, I trust you will pardon me for obtruding myself on your notice on the present occasion.

Appendix.

Of the counties of East and West Lothian I have no knowledge whatever, excepting by report; but, undoubtedly, it is very generally believed, not only that the system has been carried in these counties to a very great height, but that some of the cases which have there occurred are more palpably nominal and fictitious than any that are to be met with in any of the other counties in Scotland.

Of those counties, however, I do not wish to speak, not having, as I have already mentioned, any personal acquaintance with them. But with regard to the county of Mid Lothian I can furnish you, of my own knowledge, with definite information; and I am satisfied of nothing more thoroughly than this, that if Mid Lothian is not gone into by the Committee, its Report cannot convey to the House anything like a perfect idea of the different ramifications of the Fictitious Vote system in Scotland. In that county the system was introduced at the very earliest period, and was commenced, as I believe, in a greater variety of forms, as well as to a greater extent than in almost any other county in Scotland. In the year 1833, the very year after the passing of the Reform Act, we had not only a number of joint proprietors, in batches of sixes or upwards, but we had life-renters and joint life-renters, inrolled upon a species of landright, of which, to the best of my knowledge, there had been previously no example in Scotland even in the experience of our oldest conveyancers. In subsequent years the system continued, and in the years 1835 and 1836, more particularly, it was carried to such a height, as must satisfy, in my opinion, every impartial individual that unless it is speedily put an end to, the representation of this county will ere long be vested not in the *bonâ fide*, but in the *fictitious* portion of the constituency.

Besides, it appears to me, after an attentive perusal of the printed evidence as to Selkirkshire, that there are many flagrant classes of cases which the Committee has not hitherto brought out, and which it is most material to investigate. For instance, I observe that the Committee has had under its consideration the numerous classes of cases in which proprietors have granted life-rent dispositions, reserving the fee, and taken leases to themselves from the disponees, and that it has also brought out another variety of cases in which no money has passed between the parties, but where the prices have been settled by bills. In this county, however, cases have occurred which are not only more flagrant than either of these separately, but infinitely more flagrant than both of them put together. A party gave a disposition of a small subject, enough to yield them votes, to two of his servants in joint life-rent. He took bills from them for the price, and became also their tenant under a lease. So far the case was a mixture of the two classes of cases I have specified above. But, in addition to this, it was brought out before the sheriff, by the evidence of the party himself, that not only had no price been paid, and no rent received by him, but that at the time the transaction was gone into, it was matter of understanding between him and his master that no price should be paid, and no rent should be received, but that the rent, as it fell due, should just be marked upon the back of the bill. It may scarcely be believed that this case was admitted by the sheriff, yet so it was, and the judgment was in these terms: "In respect that a party may be proprietor without having paid a price, and in respect that a party may be proprietor without having received any rent, and in respect that a transaction got up purely to serve the purposes of registration, does not infer *mala fides*, but, on the contrary, is a transaction with a legitimate purpose in view; and in respect that the purposes of registration are not to be distinguished from beneficial interest, but on the contrary are called by many the fruits of the last great charter of our liberties, find, that the objector's statement is not relevant to infer a nominal and fictitious right, and repel the plea accordingly." I give this without comment.

Appendix.

There is also another class of cases, which I do not find are brought out in the Report of the Committee, but which I look upon as of considerable importance, and have good reason to know will, now that it is introduced, be carried to a very great extent. A proprietor of a farm, worth perhaps 100 guineas a year, conveys a tenth undivided share of it to another in life-rent. At the same time he takes back from that other a lease of the same subject, for the duration of the life-rent which he has constituted, and becomes bound to pay a rent of perhaps ten guineas a year, besides relieving his disponent of all the different burdens, public and parochial, which would otherwise be incumbent on him as life-renter of the subjects. Then as to the price, it is determined after this fashion: the parties go to an insurance office and inquire what is the value of an annuity of ten guineas during the life of a man of the disponent's age, and the price of such an annuity is fixed upon as the price of the right thus acquired. The result, as you will perceive, is simply this, that the disponent remains, truly and substantially, exactly as he was before the transaction was entered into, with this only difference, that instead of drawing ten guineas a year from his tenant, he draws it during the lifetime of the disponent from an insurance office; and, on the other hand, the transaction as regards the disponent is substantially the purchase of an annuity upon his own life at the price which such an annuity would cost in the market.

What I have given you above is, however, only the outline of this species of transaction; it, like most others of the same description, has numerous varieties to boast of. Sometimes, though the price is thus carefully calculated, no price is paid, and there is only a bill given for it. Sometimes, instead of an undivided share of a farm being disposed of, a field is divided, by a lot of parallel stakes set upright in the ground, into a number of small patches, each supposed to be worth 10 *l.* a year, or upwards; and each of these patches is separately conveyed to a different individual. At other times, when the land is already under lease, the disponent conveys as much of the tenant's rent as is sufficient to yield a qualification. But these, as I have said, are only the varieties of a genus, the general characteristics of which I have endeavoured to explain to you above.

Another class of cases, and certainly a most important one, which the Committee has had under investigation, is the class of qualifications upon property burdened with debt. The Committee is aware that though property is overburdened with debt, it still continues to be a perfectly good subject of qualification; a proposition the corollary of which is, that the more deeply a man's property is mortgaged, the greater are his facilities for vote-making. The Committee may also be aware that in some counties in Scotland, and, at all events, in this county, the rent payable by a lease is held to be *probatio probata* of value. Acting upon these principles, the sheriffs last year admitted some 14 joint proprietors upon a property which was burdened far beyond its value, and which was admitted not to be worth in itself any thing like sufficient to afford 10 *l.* a year for each of the 14. To the best of my knowledge and belief, no such case as this has occurred elsewhere, and I do trust that by your means it will be brought before the Committee.

There are other classes of cases which I might easily mention as having occurred in this county nothing similar to which has as yet been submitted to the notice of the Committee, and there are also a vast number of individual cases which do certainly bear most strongly on the subject of the Committee's investigations; but I will not advert to these, as I am afraid I have already tired you, this letter having extended to a much greater length than I at first anticipated.

In conclusion, I beg again to apologize for intruding on your notice. I should not have thought of doing so had I not felt very strongly the importance of the subject of the Committee's investigations on the one hand, and on the other the absolute necessity of going thoroughly through *all* the counties in which the system of fictitious vote-making has hitherto made head. As it is with Edinburgh, so, I have no doubt, it is with Haddington and Linlithgow; and unless one and all of these counties shall be investigated by the Committee, I am satisfied that its Report cannot convey to the House of Commons, or the country, any thing like a just or comprehensive idea of the system which is so rapidly depriving Scotland of all the benefits she anticipated from the passing of the Reform Act.

Allow me to add, that I trust the effect of this communication will not be to cause me a journey to London, at all events, at present. I am so occupied here, that I could not leave home without the greatest inconvenience; but, at the same time, if the Committee shall think proper to call me, I shall, of course, obey their summons without any hesitation.

I have the honour to be, Sir,

With the utmost respect,

Your faithful and obedient servant,

John C. Brodie.

The Honourable Fox Maule, M.P. &c. &c. &c.

MINUTES OF EVIDENCE.

(TAKEN in 1838.)

Questions 11743 to 12297.

LIST OF WITNESSES.

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MINUTES OF EVIDENCE. (1838.)

Mercurii, 7^o die Februarii, 1838.

MEMBERS PRESENT.

Mr. Walter Campbell.
Sir Hugh Campbell.
Mr. Robert Steuart.
Mr. Divett.
Mr. Bingham Baring.

Mr. Edward Buller.
Mr. George Hope.
Lord James Stuart.
Mr. Hope Johnstone.

MR. HORSMAN, IN THE CHAIR.

John Clerk Brodie, Esq., called in; and Examined.

*John Clerk Brodie,
Esq.*

7 February 1838.

11743. *Chairman.*] YOU are a writer to the signet in Edinburgh?—I am.
11744. And you have taken charge of the political matters in the Registration Courts?—Yes, since March 1835.
11745. In the county of Edinburgh?—Yes.
11746. Have you acted merely as an agent in the Registration Court, or have you acted beyond that?—I have done the duty both of agent and counsel, in the court of original jurisdiction.
11747. Do you know any thing of the registration previous to the year 1835, when you yourself took charge of it?—I do not know it personally; practically, I do. I have had occasion frequently to analyse the constituency of those years.
11748. Has any great change taken place in the constituency subsequently to the year 1832?—Very great indeed.
11749. In the general character of the qualifications on which the voters were enrolled?—Certainly.
11750. Can you state to us in what that difference generally consists?—In the year 1832 there were some few joint proprietorships, all of a particular description; they were parties who were either joined together in copartnership in trade, and who occupied the subjects for which they were enrolled for the purposes of their joint trade, or they were parties who had acquired their property by succession, or by *mortis causa* deed. They amounted, in number, in the year 1832, only to 19; that is to say, that over the whole county in the year 1832 there were only 19 joint proprietors. In the immediately succeeding year, 1833, there were 20 joint proprietors enrolled on the addition to that year, and these joint proprietors were, for the most part, of a description totally different from those enrolled in 1832.
11751. In what respect different?—They were men who had acquired their properties in batches varying from two to ten, with no view to trade, or copartnership whatever, but avowedly with a political object; and that system has gone on progressively increasing. In 1835, on the addition to the preceding year, there were 29 enrolled on the addition to the year; in 1836, there were 97 enrolled on the addition to the year; and in 1837, there were 83 enrolled on the addition to the year; and whereas in the year 1832 there were only 19 joint proprietors in all over the whole county; there are at present, in the year 1838, no less than 239; and these, as I have stated, almost wholly of a nature totally different from the few that were enrolled in 1832.
11752. Has there been a new kind of qualification created by means of life-rents also?—There has.
11753. To a great extent?—To a very great extent.
11754. Explain the nature and the extent of it?—In 1832 there were 43 life-renters

2 MINUTES OF EVIDENCE BEFORE SELECT COMMITTEE

John Clerk Brodie.

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renters enrolled throughout the whole county; of these, 33, being the greater proportion, consisted of ministers and schoolmasters, who had acquired their life-rents *ex officio*; 9 had acquired by marriage succession, or *mortis causa* deed, and the remaining 1 was a party who, having originally been the sole proprietor, had sold the fee, reserving the life-rent to himself.

11755. Have the life-rents created since been of that character, or of a new kind?—They have been for the most part totally different.

11756. In what respect?—They have been chiefly of a kind to which there was no parallel in 1832, and of which I believe there was no instance before in Scotland, except in the case of the old paper qualification, which it was the intention of the Reform Act to do away with.

11757. Will you show us how they have progressed?—In 1833 there were 14 life-renters enrolled; of these 2 were joint life-renters, a description of right of which there was no instance in Mid-Lothian in 1832; 3 were life-renters who had acquired the rights from parties who reserved the fee to themselves; and the remaining 9 were of the same description as those enrolled in 1832, namely, ministers and schoolmasters, and life-renters by marriage or succession. In 1834, again, there were 13 life-renters enrolled; of these 6 were ministers and schoolmasters, 5 were joint life-renters; 1 was an entailed proprietor; and the last was the eldest son of an entailed proprietor to whom his father had made over a farm of some two hundred a year.

11758. Give us the numbers that were enrolled in the subsequent year, without going into detail?—In 1835 there were 36 enrolled on the addition to the year; in 1836 there were 59; in 1837 there were 85; and whereas in 1832 there were 43 life-renters on the roll altogether; there are now, in 1838, 235 life-renters.

11759. *Mr. Edward Buller.*] What is the total constituency in Mid-Lothian?—The total constituency is about 1,860; in 1832 it was 1,294.

11760. *Chairman.*] Of the 235 life-renters that are now existing, can you tell us how many are of the new kind, which you describe as not known at the time of the passing of the Reform Act?—I cannot answer the question exactly, but I think I am very near the mark when I say from 170 to 180 at least.

11761. *Mr. George Hope.*] That is, of the 235?—Yes, I should say fully 170 to 180.

11762. *Chairman.*] You have told us of these two new kind of rights; is there any thing in the mode of acquiring them that is peculiar; is the transaction one that is usual, or has there been any thing objectionable or colourable in it?—It is very unusual; I think I have already stated that, except in the case of the old paper qualifications, nothing of the kind to my knowledge ever existed in Scotland.

11763. My question applies not to the nature of the right itself, but the mode of acquiring it; how are they generally acquired?—They are acquired nominally by purchase, but in by far the greater proportion of the cases no money actually passes, the price being settled by bill. There is also a very great number of cases in which back leases are granted by the life-renter to the original proprietor, who thus merely changes his situation, and becomes tenant and fiar of the subject, instead of being as before absolute proprietor.

11764. Do you mean that the transaction between the parties is purely nominal?—I do; it is substantially so.

11765. *Mr. Hope Johnstone.*] Has the party no right at law under that?—It is generally so managed that he has no right at law which can be easily made available.

11766. Can it be made available?—In most cases I should say not at all; but I principally refer to the impression which is made on the mind of every one, that in these transactions no right is intended to be made available.

11767. I am asking not as to the impression, but supposing an attempt be made to take legal proceedings on such a transaction?—My answer is, that it would be in most cases very difficult, and in some impossible.

11768. Mention why?—Because although the party gets nominal delivery of the disposition, and it is for form's sake placed in his hands, he in the great majority of cases immediately gives back the disposition to the agent of the party from whom he got the right, and that agent retains it in all time coming.

11769. *Mr.*

11769. Mr. *George Hope*.] Would the effect of giving back the disposition void the conveyance?—No. *John Clerk Brodie.*

11770. Therefore, although the disposition is returned, although the deed itself is returned, the estate remains vested in the person to whom it is conveyed?—It would be so only in the event of the parties coming into a court of law, and the disponent being able to prove that it was not a nominal but a real transaction. 7 February 1838.

11771. When you say his being called on to prove that it was not a nominal but a real transaction, do you mean to represent that if he proved in a court of law that he had given his bill for the purchase, that that would be held a real transaction, and that he would then be liable on the bill?—I apprehend it would be open to the granter of the right to prove that the transaction was merely nominal in a court of law, if that was its true character.

11772. Supposing, however, that upon a case of a bill granted, on which the party is legally liable, I put that case, and it is proved that he is legally liable; do you consider that it is not sufficient to constitute a *bonâ fide* transaction in a court of law?—Undoubtedly; I apprehend that if the transaction is really *bonâ fide*, a valid and effectual right will be constituted in the person of the party receiving it.

11773. I apprehend the only bills granted are bills on which parties might be sued, and supposing them able to pay, the money might be recovered?—Yes, provided the party who granted the bills could not prove that it was a collusive transaction.

11774. Do you apprehend, in the event of those bills coming into the hands of creditors on the death of parties, or any other cause, that they would or could be enforced?—I apprehend that if they were merely found in the repositories of the deceased, neither his representatives nor his creditors could make them more available to them, than the original holder could have made them available to him.

11775. Would it not be *primâ facie* a good claim?—On the face of it, it would.

11776. He would therefore be obliged to establish, in opposition to it, some facts to prove the transaction to have been collusive?—He would.

11777. *Chairman*.] Would that one fact that you mentioned, the return of the deed immediately after delivery to the party, of itself be an act of evidence of the transaction being collusive?—It would be most material.

11778. Mr. *George Hope*.] When you say most material, it would be one circumstance with others?—Yes, a material one.

11779. It would not be conclusive, except as one point in the chain of evidence?—I do not apprehend that it would, of itself, be conclusive.

11780. Mr. *Robert Steuart*.] Do these dispositions contain the usual clause to authorize the registration thereof in the books of council and session?—In some cases they do, in others they do not.

11781. Have you ever known them to be so recorded?—Never; not in one instance.

11782. In order to complete the title to property so acquired, before it could be afterwards disposed of, would it not be necessary that the party so purchasing it should be enfeoffed?—Before any real right could be obtained to the land, it would.

11783. Have you ever known any case in which enfeoffment passed on a disposition so granted?—Never.

11784. I would like to ask you a question with regard to the converse position of the case on which an honourable Member has examined you: suppose a party to have so purchased property; to have given a bill, obtaining a disposition in return; and to have given back the disposition in the mode which you say is usually done, could he afterwards, by proving that he had given his bill, compel the party who originally gave him the disposition to complete the sale so made, the disposition being in the hands of the disponent?—Not if it could be proved that it was not a real transaction.

11785. He could not, then, although he had proved that he had granted his bill, compel the disponent to complete the transaction, if the disponent could show that it was done for the purpose solely of registering him as a voter?—Certainly not.

11786. Mr.

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11786. Mr.

John Clerk Brodie,
Esq.

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11786. Mr. *George Hope*.] And when you say he could not compel him to complete the sale, is not the sale complete already by the execution of the conveyance?—It is not; that is, it is not so completed that a party getting the right could go against the tenant, and compel payment from him.

11787. Just have the goodness to mention what steps are necessary?—You must intimate the conveyance to the tenant, or else you must take enfeoffment.

11788. Do you apprehend, therefore, in the case put by the honourable Member, that the party who had given his bill could not compel the party from whom he purchased to intimate to the tenant?—Not in the hypothetical case put.

11789. Supposing the disposition returned, but supposing the bill given is still outstanding, and the party who had given it is held to be liable, would the circumstance of the disposition having been returned prevent the party giving that bill from being called on to fulfil the transaction?—It depends entirely on this, whether it be truly a *bonâ fide* transaction or collusive; if it be a *bonâ fide* transaction, the party would in a court of law get the remedy which would be due to him, and he would be found entitled to enter on possession of the subjects. If, on the other hand, it was a collusive transaction, it would be open to the party granter of the right to prove that it was so, and no execution could follow.

11790. I think you misunderstand my question; I do not doubt that if the transaction is proved collusive, that the party could not recover; what I wish to direct your attention to is this; I want to know, supposing the party who has purchased is liable in that event: and I go farther; supposing an action to be brought, or a suit to be brought on that bill, and he is actually compelled to pay that bill, which is, as I understand, totally independent of the conveyance, could not that party call on the person to whom he had given the bill and sue him, and would not that be a good defence?—It would be a good defence, in answer to an action for the payment of the bill, to plead that it was part not of a real but a collusive transaction; if the party so pleading failed in making out that fact, and decree passed against him, he would then, of course, be entitled to the counterpart of the bill, namely, the right for which the bill was granted.

11791. The result I apprehend to be, that in order to render this transaction, according to your construction on the facts now stated, collusive, that both parties must agree, the one not to sue on the bill, the other not to insist on the conveyance?—That must be substantially the nature of the transaction.

11792. *Chairman*.] Do you believe that is substantially the nature of the transaction you have described?—I believe it is, and the general understanding is that it is so.

11793. Mr. *Hope Johnstone*.] Do you know a single case in which such an understanding was entered into?—I do not know of a single case, and that forms one of the material features in the whole transaction, that it is so very difficult, amounting almost to an impossibility, to arrive at what is really the true nature of the transaction between the parties.

11794. Sir *Hugh Campbell*.] On what do you form your opinion to which you have given your last answer?—I form my opinion on this: that the rights of which I am speaking are acquired either in a way totally unknown in real transactions, and in their details exhibit a degree of confidence between the granter and the grantee, which, bearing in mind, that from the way in which the transaction is managed, no real right may pass, the conclusion is almost inevitable that no real right does pass.

11795. *Chairman*.] Does the fact of the person who gives the bill, leaving the subject in the hands of the granter, who holds both the property and the bill, not show a confidence which is unusual in real transactions?—Very unusual; and I may mention, in addition to that circumstance, that, in almost every case with which I am acquainted, the factor for the granter continues to draw the rent of the subjects along with the rest of his property exactly as before.

11796. Mr. *Walter Campbell*.] Is it not also a fact that the circumstances of the party who acquire this right are in ordinary cases such that it is not probable, in point of investment, that they would have purchased property for investment?—In numerous cases.

11797. Is it not almost invariably the case?—I apprehend so.

11798. Mr.

11798. Mr. *George Hope*.] Is it avowed in most cases?—Certainly; there is no secret made of it. *John Clerk Brodie, Esq.*

11799. With respect to the understanding that exists in these cases, is it an understanding that has any legal obligation in it?—Unquestionably it has.

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11800 Is it such an understanding that binds a person's heirs and executors?—The fact of the party dying would not affect the understanding; though it might make the proof of the understanding more difficult.

11801. Perhaps you will just state exactly the nature of the understanding?—The nature of it is simply this, that it is not to be a transaction by which the property is truly to pass, but merely one which shall attain the object of enabling the party to be put on the roll.

11802. Although it is a question of law, perhaps you will give your opinion, if such a transaction was proved by an executor, would it be a sufficient defence to the holders of those bills?—The defence would be as good against a man's representative as it would against himself; but in the event of the party having committed the fraud of endorsing over the bill, though it was never intended to be endorsed, it might no doubt be a perfectly good bill in the person of the onerous holder, but the fact of the endorsement would found an action at law, at the instance of the party granter of the bill, against the original grantee, for relief of the contents.

11803. Then I think the result, as I understand it, is that, instead of these transactions or understandings being no legal obligation, they have a legal obligation, according to your view of it?—I think I have already stated that an understanding has a legal effect if you can prove it; the difficulty is to get at what is the true nature of the transaction.

11804. Mr. *Robert Steuart*.] Suppose this case, that a party who has disposed property in the manner described dies, and that his heirs and executors find in his repository the promissory notes granted as the consideration for these dispositions, and the dispositions themselves, which you have already stated are usually returned, would it not be a sufficient defence by the parties who granted these bills that they never entered into possession nor got consideration for the bills so given?—I will not say that of itself it would be sufficient; but, certainly, very slight adminicles indeed would be sufficient to make out the case.

11805. You do not apprehend that, if the property had continued in the occupation of the person who granted these dispositions, the fact of the bills being found in his repositories would be evidence that would warrant the court in enforcing the completion of the sale?—Certainly, I should say not; I would add, that in the case supposed, of the bill and disposition being both found in the repositories of the granter of the right, and the granter having continued from the date of the alleged transaction to draw the rents of the subject, and to act in every way as proprietor of them, I think that, these facts being made out, they would of themselves be sufficient to vitiate the bill.

11806. In most of these transactions, will it not appear that the bill and the disposition have remained as well as the occupation of the property in the possession of the donee?—In almost all of them.

11807. Mr. *Hope Johnstone*.] What would be the effect of such a transaction as you have described on the power of the original proprietor to execute any deed affecting the subject?—If the transaction was not a real one, it would not affect him in the least.

11808. He would retain, notwithstanding the conjecture that has been described, the whole powers of the proprietor to make settlements affecting the subject?—Yes, certainly he would.

11809 Mr. *George Hope*.] Do I understand these observations of yours to apply to cases where there has been neither enfeoffment nor intimation to the tenants?—I have been alluding to those cases, but I do not think that mere intimation to the tenants would be of itself a sufficient answer; for I think that, in the case which is supposed, of a disposition remaining in the hands of the granter; of the rents continuing to be drawn by himself or his factor; and of there being no evidence of any thing but intimation having actually taken place on disposition; no real right could pass.

11810. *Chairman*.] In these cases, intimation is always given to the tenants?—No, by no means.

11811. Is it not necessary for the purposes of registration?—No; in some counties it is held necessary, but in Mid-Lothian it is not.

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11812. Mr. Robert Steuart.] And the appeal sheriffs have decided it?—Yes, that it is not necessary.

11813. Chairman.] In some counties it has been decided the other way?—Yes.

11814. Mr. George Hope.] In cases in which there has been actual receipt of rent as well as intimation to the tenant?—My observation will apply to every case which was truly collusive, and not real in its nature. The proof of the collusion may be rendered more difficult in one case than another, by certain facts having occurred in the one which have not taken place in the other; but wherever it can be made out that the transaction was a collusive transaction, my observations apply to that transaction.

11815. As I understand you, you assume it to be possible that in those cases where the rents are actually received by the party after the conveyance, that it is still collusive?—I have never known an instance in my experience in which the rents were actually received; and I may mention the reason why. The life-rent dispositions are generally granted in the month of January, and the first rent stipulated is generally made payable at the term of Martinmas next ensuing; the Registration Court holds in the month of August, and consequently there has been no time for payment of rent. No rent could have passed under the transaction before the Registration Court holds, and the deed is framed with that object.

11816. Supposing however the case, which has not occurred in your experience, of a party who has received the rents, and who has been enfeoffed; would that constitute, in your opinion, a *bond fide* transaction?—I should conceive the fact of taking enfeoffment a most material circumstance in favour of the reality of the transaction.

11817. Chairman.] You say in these cases it is very difficult to prove that this understanding exists?—So difficult as to be almost impossible.

11818. By the practice of the Registration Courts, may it exist in all those cases where the granting of life-rents occurs?—It not only may exist, but it is generally believed that it does so.

11819. Is it at all necessary to show in the Registration Courts that the party derives any beneficial interest whatever from the subject that he acquires?—The mere production of a life-rent disposition, without any other circumstances whatever, is sufficient in the Registration Court of Mid-Lothian to entitle a party to be put on the roll.

11820. And, therefore, though you cannot state that the understanding does exist, it may exist in every one of these transactions, and the Registration Courts offer no bar to it?—Certainly it may, and it is generally believed to be the case.

11821. Have any cases at all come out before the sheriffs, showing that the transaction was really only a nominal one, and for the purpose of registration, which have been admitted on the roll; my question applies to cases which are not only nominal in themselves, though disguised before the sheriffs, and of which evidence is given to prove that they are nominal?—I have seen a case in the Appeal Court of Mid-Lothian, in which the sheriffs openly stated their moral conviction that the case was collusive, and yet that they felt themselves bound to admit the claims, and actually did admit them.

11822. Will you state to us what were the circumstances in that case?—A merchant in Edinburgh granted a life-rent disposition of a small field to two of his servants, one his overseer and another his clerk; the disposition bore to be for a price paid; it turned out that no money had passed, the price having been settled by bill; it further turned out that a lease had been granted by the servants to their master, at a rent just sufficient to qualify them; and it was admitted on the examination of one of the parties, that at the time the transaction was entered into, it was agreed between the master and the servants, that the rent should not be paid as it fell due, but should be marked on the back of the bill as a payment to account; and though I understood the sheriffs to state their moral conviction that this was a collusive case, they thought themselves bound to admit the claimants, and did so.

11823. Have you got the terms of that judgment?—I have got the terms of the judgment of the registering sheriff in the court of original jurisdiction; it is not to him that I allude when I say the sheriffs expressed their moral conviction that it was a collusive case, for he was not a member of the Appeal Court, and as to his notion of the case you will see what that was from the terms of his judgment.

11824. Mr.

11824. Mr. *Edward Buller*.] Were the parties to the transaction ever examined?—In one of the cases. John Clerk Brodie,
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11825. Before the original court, or the Appeal Court?—Both the one and the other. He could not be examined in the Appeal Court without having been examined in the original court of jurisdiction. 7 February 1838.

11826. Was he examined with regard to the nature of the transaction?—Yes, he was.

11827. Did he state it was a *bonâ fide* transaction?—After stating all these circumstances, my impression is that he said it was a *bonâ fide* transaction; and it being an examination on reference to oath, we were obliged to take this statement as true.

11828. Supposing you examined the party yourself, you are not then allowed to produce other evidence before the court of original jurisdiction?—You are not; you are bound to take his statement as correct, and are foreclosed from all other evidence.

11829. Although you have strong reasons to believe that a person is committing perjury, you are not at liberty to produce evidence to prove that he has done so?—Certainly not.

11830. *Chairman*.] Was it on the evidence of that party of whom you have just spoken that the sheriff gave his judgment?—It was; the whole documents being before him, and the facts which I have now mentioned to you.

11831. Will you read the terms of the judgment?—Yes. The judgment is in these words:—"In respect that a party may be proprietor without having paid a price, and in respect that a party may be proprietor without having received any rent, and in respect that a transaction, got up purely to serve the purposes of registration, does not infer *mala fides*, but on the contrary is a transaction with a legitimate purpose in view; and in respect that the purposes of registration are not to be distinguished from beneficial interest, but on the contrary are called by many the fruits of the last great charter of our liberties, find that the objector's statement is not relevant to infer a nominal and fictitious right, and repel the plea accordingly."

11832. On an appeal being made from that judgment to the appeal sheriffs, they confirmed it, at the same time stating their moral conviction that the whole transaction was a collusive one?—Yes, I understood so.

11833. Mr. *George Hope*.] Supposing, in these cases, the parties had been enfeoffed, I presume they would acquire a legal right in the land?—They would.

11834. As I understand you, the decision turned on the oath of the party?—Yes; but I committed a slight inaccuracy in stating that the party himself was examined on oath before the registration sheriff; I find the way in which it was done was this: in the Sheriff Court, in order to bring out what the transaction really was, I examined the one as a witness in the case of the other, and I got out the facts of the transaction from him, and so satisfied was I on learning the facts that the case could never be sustained, that, when we came to the Appeal Court, the matter was referred to the oath of the party.

11835. Was what he then swore in contradiction to the evidence he had before given?—By no means.

11836. Had you any suspicion of perjury?—I am bound to say, that when the man stated that the transaction was a real and not a nominal transaction, I did not, in my own mind, believe that he was speaking the truth.

11837. That case is one, as I understand it, in fact, of a right supported by false evidence?—In one view it may be said to have been so; but I believe the party gave the true version of the fact, with the exception of his answer to the general question, that it was a real transaction. The sheriffs, therefore, had every thing before them, which, in my apprehension, was sufficient to enable them to form a judgment.

11838. Was not the material question, in fact, whether it was a real transaction or not?—It was.

11839. *Chairman*.] Do not I understand you to say, whether or not it was a real transaction; that the judgment both of the registration sheriff and the appeal sheriffs goes to show that they would have admitted it on the oath and on the mere documents before them, even though there was a collusive understanding?—No; I apprehend it does not go that length; I think that the sheriffs' idea was this: "We are morally convinced this is a fictitious and not a real transaction, but upon this evidence we are bound to admit it."

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11840. Supposing the mere legal documents are laid before them, although there may be evidence of collusion to satisfy the mind of the sheriffs, they are bound to admit it?—There may be the clearest moral evidence of collusion, and the sheriff will yet admit. If there were legal evidence of collusion, I apprehend the sheriffs would reject; but I have already stated that it is so difficult as almost to amount to an impossibility to obtain legal evidence on that subject.

11841. Mr. *Hope Johnstone*.] Is this principle at all different from the principle that guides any other court?—In another court of justice you would have parties opposed to each other; here you have them acting in collusion.

11842. My question has reference to the principles on which judges decide?—I do not think it would be decorous in me to give an opinion opposite in point of law to that which the sheriffs arrived at. I may say this, however, that in the minds of the counsel for the objector, I believe, there was a thorough conviction that the decision ought to have been different in point of law.

11843. Can any court take cognizance of facts not legally before it?—In a case of reference to oath, I apprehend that the court should take the whole oath as it stands, and judge of it as a whole; I apprehend it should not take one isolated question and answer, and judge of those without reference to every thing else that is sworn to; but take the whole oath, and form an opinion of it as a whole. No doubt it was sworn to by the man here that it was a *bonâ fide* transaction; but on the same oath you had facts and circumstances sworn to, which appear to me to be sufficient of themselves to establish the contrary.

11844. Was any evidence led to throw a doubt upon the oath of the party?—There could be none; the reference to oath prevented your resorting to any other evidence.

11845. Mr. *Edward Buller*.] So that if the party is willing to swear to a *bonâ fide* transaction, on reference to his oath, that becomes perfectly conclusive?—Yes, if you refer it to his oath, it does.

11846. And you have not the power of examining the party, unless you refer it to his oath, and his oath only?—You have not.

11847. You are in this position; you must either refer it to his oath, which is perfectly conclusive, and shuts out all other evidence, or you must abstain from examining him altogether?—Certainly; I may, perhaps, mention in explanation, that I have on more than one occasion submitted to the sheriffs that the reference to oath was not the proper course to adopt, but that another course which is in practice in Scotland should be resorted to, namely, the judicial examination. The judicial examination is different from the reference to oath. In a reference to oath, what is sworn to is conclusive of the fact; but in the judicial examination, what a party swears may be taken in evidence against himself, as being his own admission, but cannot be taken as evidence in his favour, because it is merely his own allegation. The judicial examination, therefore, is the mode which I have submitted to the sheriffs ought to be adopted in the examination of claimants, but they have uniformly overruled me.

11848. Then if you have recourse to the judicial examination, does that shut out other evidence?—Certainly not.

11849. In point of form, what is the difference between reference to oath and judicial examination?—There is no difference between them in point of form; the difference is in their effect.

11850. They both consist in any number of questions which the party chooses to put?—Yes; or rather which the judge, at the suggestion of parties, chooses to put; it is all done by the judge, but the questions are generally put at the suggestion of the parties, the object being to get at the truth.

11851. Mr. *Walter Campbell*.] I should like to ask you, with respect to the question of reference to oath, is it not also the fact that the person who objects to the claimant has the right to leave the evidence to that person's oath, and has it not this effect, that there are instances in which parties objecting to a vote, and knowing that the claimants are out of the country, have referred the case to that person's oath, and he not being present has lost his vote because he is not there to give the oath, and no other evidence can be adduced in reference to his claim?—I recollect a case somewhat analogous to that.

11852. In the first place, is it not the fact that the party objecting to the vote of a claimant has a right to rest the case on the oath of the party claiming,
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in preference to all other evidence, and to the exclusion of all other evidence? —It is. *John Clerk Brodie, Esq.*

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11853. Now proceed with the case you mentioned?—The case I alluded to was this: a farmer who resided near Jedburgh had claimed to be enrolled as tenant of a farm in Mid-Lothian; he was cited to appear at the Sheriff Court, the allegation being that he was not truly the tenant, but that the true right to the lease was in his family, of which he was only an individual member. The answer to the citation was, that the man was engaged with his harvest, which it would be exceedingly inconvenient and injurious to him to leave at that period, and that rather than do so, he would submit to the consequences of non-compearance. Upon this, the sheriff rejected his claim, on the ground that though cited, he had not appeared to depone on the reference to oath. The sheriff, I understood, would not permit the party claimant to go into evidence and prove a *prima facie* case, as the matter having been referred to his oath, and he not appearing, that was conclusive.

11854. In short, no other evidence could be taken, as it had been referred to the oath of the claimant?—Yes.

11855. *Chairman.*] Is not this reference to oath rendered still more difficult by the very great distance in which parties in some cases have to come in some counties to the Registration Courts?—Certainly.

11856. By the present system of the Registration Courts, it sometimes happens, does it not, that parties are brought as much as 60 and 70 and 80 miles, and are kept 12 or 13 days, during the sitting of the Registration Court, before they are examined?—They are exposed to that inconvenience.

11857. *Mr. George Hope.*] As to the question about reference to oath, is the practice the same in the Registration Court as in all the other courts?—Yes, except that in other Courts it is in the power of the judge to resort to judicial examination.

11858. *Chairman.*] Has the number of joint tenancies increased in Mid-Lothian since the registration of 1832?—They have.

11859. Do they afford opportunities for any collusive transaction between the landlord and the tenant?—I think undoubtedly they do.

11860. Have there been any votes of an objectionable nature introduced in that manner?—In Mid-Lothian the system of creating votes by joint tenancies has not reached the height which I understand it has attained in other counties.

11861. In what way is an opportunity given to the parties by the practice of the Registration Courts in Mid-Lothian to enter into a collusive transaction?—The sheriffs in Mid-Lothian hold, that if the name of a party is in a lease, and he be bound for the rent of the farm, it is a matter of no importance whether he has a real or beneficial interest in that lease.

11862. May a person be enrolled as joint tenant on a farm in Mid-Lothian who is neither resident on the farm nor takes any share in it, and who has no character whatever in which he could claim as a joint tenant, except the fact of his name appearing in the lease, and his being in that way answerable for the rent?—His name being in the lease would be perfectly sufficient.

11863. With regard to the lease, do they hold that the rent which is payable in the lease is evidence of the value of the farm, or do they allow any other evidence to be given to that fact?—They allow no other evidence.

11864. If parties choose to enter into a transaction, the one letting the farm at a nominal but very high rent, in order to qualify a certain number of joint tenants, and the parties agreeing to pay that rent merely for the purpose of qualifying, and a secret understanding existing between them, would those parties, by the present practice of the Registration Courts, be admitted on the roll?—If you could prove the secret understanding and that the rent was clearly collusive, I should say not, otherwise they would.

11865. Does the difficulty of proving that secret understanding operate as it does in the cases of life-rents to facilitate fraudulent transactions in joint tenancies, if the parties choose to avail themselves of the powers so given?—I should say unquestionably so; but I have already said that joint tenancies have not been carried to any great extent in Mid-Lothian.

11866. *Mr. Hope Johnstone.*] Do you know any case of a collusive arrangement, such as you have represented, in which a very high nominal rent has been agreed to be paid in cases of joint tenancy?—I do not know any case of joint

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joint tenancy, but I know one which bears out the case I have mentioned pretty clearly. It was the case of the rent in a lease, unquestionably double the real value of the farm, being found to be incontrovertible proof of value.

11867. Was that a recent lease?—No, it was not.

11868. What was the date of it?—It was dated several years back.

11869. And therefore that lease had not been granted for political purposes?—No; it was the case of a lease including land and a lime quarry; the lime quarry had been wrought out and exhausted, and therefore one half of the rent, being that part which had originally been paid for the lime quarry, came to be paid for what truly did not exist. The sheriffs held that the parties claiming were entitled to the benefit of the full rent of the lease, and that you were not entitled to prove that the subject was exhausted from which part of the rent was payable.

11870. Mr. George Hope.] The sheriffs in that case proceeded on the principle that the party being actually liable for the rent was bound to pay it?—They proceeded on the principle that the rent was incontrovertible proof of the value.

11871. Was that opinion founded on the liability of the tenant to pay?—I cannot say.

11872. Was there nothing passed that led you to suppose what the grounds were on which they came to that conclusion?—I understood the judgment simply to amount to this, that wherever rent is stipulated in a lease, you must hold that to be the yearly value of the subject, and you cannot enter into any other evidence.

11873. Were you present at the discussion on the principle of that decision?—I was present both in the Sheriff and Appeal Court, and argued the case myself in the Sheriff Court.

11874. Did the sheriffs in delivering their judgment assign any grounds for their decision?—The sheriffs went on this, that the lease contained a specific amount of rent, and that you were not entitled to go farther.

11875. That, according to my view, is the decision they came to, namely, that rent was conclusive; will you have the goodness to tell me whether they gave any grounds for coming to that conclusion?—I understood them to consider that the lease was a contract between the parties, which they were bound to give effect to.

11876. You say there have been very few cases in Mid-Lothian of these joint tenancies, but there have been some in other counties; do you know of any distinction between the mode in which property is held in Mid-Lothian and that on which it is held in counties where it has taken place?—I do not.

11877. Are you aware that in the counties where joint tenants have been enrolled principally, it is customary to hold what are called led farms?—I believe that in Selkirk and other counties, led farms are of frequent occurrence.

11878. That, in fact, in most large farming concerns in those districts they have a green farm, and also an agricultural farm?—I believe that is the case.

11879. It is in those cases, I presume, in which more than one tenant has usually been registered?—That I cannot say; I do not know why the fact of a party holding a farm and a led farm should give occasion to the creation of joint tenancies.

11880. Does it not require, in the case where there are two or three or more farms, a greater superintendence, and consequently a greater number of people than a pastoral farm?—Undoubtedly.

11881. And perhaps you are sufficiently well acquainted with these farms to know that there is generally a resident farmer on each of them?—There must always be a person who is connected with agricultural pursuits.

11882. Chairman.] You said that in those counties the joint tenancies had increased very much since the registration of 1832?—Yes.

11883. Have led farms required more superintendence since 1832 than they did before?—Of course not.

11884. Mr. George Hope.] Can you understand parties being more anxious, although they possessed a *bona fide* right before to clothe themselves with a legal title since the Reform Act than they were before?—I should suppose they would always have been anxious to obtain evidence of a legal right, if they possessed it.

11885. They would be anxious to be liable for the rent to the landlord?—If they

they possessed a real right, I do not see how they could escape being liable for the rent of the landlord. John Clerk Brodie,
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11886. Mr. *Hope Johnstone*.] In point of fact, were joint tenancies in these pastoral counties always a matter of frequent occurrence?—I believe it was of more frequent occurrence in such counties than in counties purely agricultural.

11887. Mr. *George Hope*.] Supposing the transaction to be wholly collusive, is there any reason why joint tenancies should not be created in an agricultural district, in Mid-Lothian, for instance, as any other?—I think joint tenancies might be created in any county in Scotland.

11888. With equal facility?—In some counties, what we consider collusive votes have been created in one way, and some in another; but I believe that the same facilities for creating collusive votes exist in every county.

11889. Do you not think that the bar to the creation of votes in joint tenancies is, in the first place, parties not wishing to be liable to the rent, and in the next, the landlords not being willing to admit a number of persons with whom they have no connexion into their leases?—I think that these are considerations which, in an ordinary transaction, would weigh with both parties; but experience has shown that they are very frequently waived for political objects.

11890. Would a party, by being admitted a joint tenant, acquire legally any right in that farm?—Yes, if he was truly joint tenant of the farm.

11891. I understood you to say, that the sheriffs had held it quite sufficient to show a party named in the lease, and nothing more?—Yes, I made that statement.

11892. Are there not distinctions taken in the Reform Act between the different classes of tenants; is it not required of some that they shall have an interest to the amount of 50*l.*; of others that they shall merely be liable to pay a rent of 50*l.* with occupancy?—There are two cases, in one of which the statute looks to the surplus value after the rent is paid, and in the other to the amount of the rent itself only; but I humbly apprehend that, in both cases, the statute intended that a party claiming as tenant should be truly tenant of the subjects.

11893. Presuming the party to be tenant, that is, to be legally such, could the sheriffs do otherwise than follow the Act, and admit in one case without inquiry as to the interest, and in the other with?—If I am right in the opinion I have already expressed, though the sheriffs should look for the amount of the qualification, in the one case to the surplus after the rent is paid, and in the other to the amount of the rent itself, they should in no case admit a party who has not a beneficial interest as tenant in the subject.

11894. Therefore, your answer merely refers to the admission of a party whom you consider to have no real interest in the subject?—My answer refers to parties who are admitted as tenants on the simple fact of their name being contained in the lease, without any other circumstance whatever inferring real tenancy, or beneficial interest.

11895. Therefore your objection went to the line of evidence which the sheriffs required?—No, it goes to this, that the sheriffs do not require enough to be proved.

11896. Does not your objection go to this, that the sheriffs do not require sufficient evidence of the *bonâ fides* of the transaction?—It is this, that the sheriffs do not look at all to the question, whether the tenant has a beneficial interest in the subjects or not, but merely to the fact, whether his name be in the lease.

11897. Do you apprehend there is any thing in the Reform Act which precludes the sheriff from requiring further evidence?—The sheriffs have held the fact I have stated of a man's name being in a lease to be of itself sufficient to entitle him to be enrolled as tenant.

11898. Is it not a matter, if I may call it so, of judge-made law from the sheriffs' own decisions?—It is the sheriffs' construction of the Reform Act.

11899. Is there any thing, in your apprehension, in the Reform Act which confines the sheriffs to that course of evidence?—If I were to give my individual opinion, I should say not; but it has been differently ruled by the sheriffs.

11900. *Chairman*.] Then the manner in which it has been ruled by the sheriffs gives the opportunity to a person to put as many joint tenancies in a lease as the rent will qualify, and the mere fact of their names appearing in the lease is sufficient to enable them all to get upon the roll?—I understand so.

11901. Mr. *Edward Buller*.] Would not an alteration in the practice of the Sheriffs' Court be sufficient to put an end to these collusive transactions, both as respects

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joint tenancies and life-renters?—No it would not. In the case of joint tenancies it would not do so, because the sheriffs think it a matter of no importance whatever under the statute whether the tenant has a beneficial interest in the subject or not, they think it enough that his name is in the lease, and that he is bound to the landlord for the rent.

11902. Then in all collusive transactions with respect to joint tenants, do you think it essential that the tenant should have a beneficial interest, and that, coupled with that, the sheriff should sift the case to the bottom, by hearing all evidence tendered?—I do think so.

11903. Then those two changes would be sufficient, in your opinion, to put an end to these collusive transactions?—I apprehend they would be very nearly sufficient to accomplish the object.

11904. With regard to life-renters, would a simple change in the practice of the Sheriffs' Courts be sufficient to check those transactions?—I do not think so.

11905. What other change do you imagine would be necessary?—I do not think the giving the sheriffs greater facilities of investigation would be sufficient to remedy the evil which is sustained by life-rent votes. These life-rents appear to me to give great facilities to parties acting in collusion to create fictitious qualifications; the right, as I have stated, is generally constituted in the month of January; the question comes on for discussion in the month of August, before any thing practically has been done in the matter; no rent has fallen due or been received, and the fact whether or not any real right has passed from the one to the other is in the breasts of the parties alone, and can only be got at by the examination of the one or the other, or both of them; and supposing them to be acting in collusion with each other, and to have a confidential understanding, which although it may not have been expressed, has passed from the mind of the one to the other, and I apprehend the remedy you have suggested will not be sufficient.

11906. That is to say, that you do not imagine that any examination of the parties themselves, or the production of any evidence, would be sufficient to sift similar transactions to the bottom?—I apprehend not, and I have had considerable experience in such transactions myself.

11907. Is not that saying, that it being necessary to support these transactions by a false oath, that false oath will be generally taken?—The way in which these transactions are generally managed is this: a party goes to another and states that he is willing to give him a 10*l.* life-rent qualification, for which he will take his bill, and the understanding is expressed that the bill is not to be called up for a considerable time; but care is taken to say in conversation, "You will understand, sir, that this bill may be operated on by me at any time I think it right; but you, on the other hand, have this life-rent right over these subjects;" and, therefore, what is expressed, if it were true, would really be in favour of the qualification; but then the reality of the transaction is not so, and the sole object and meaning of the parties is that a vote shall be created, and that no right shall pass from one party to the other. Then when you examine these parties, and come to ask them the understanding, you find they say that no understanding whatever existed, that the one may be called on to pay his bill, and would be bound to pay it if called on; and that the other is quite entitled to enter into possession of his life-rent right. What the granter may do, or what I may do, (they sometimes say,) is another matter, and in this way you do not truly get out even from the examination of the parties, what is the reality of the transactions between them. I am speaking now from personal knowledge, because I have myself made a considerable number of these life-rent qualifications, and I have seen the parties examined, and have heard their depositions on oath.

11908. But if you put questions to parties as to the *bond fide* nature of the transaction, as to whether they had any intention of purchasing, as to whether they had any intention of ever taking possession, or ever exercising any acts of ownership, the answers must either be false, or they must show the collusive character of the transaction?—With regard to the uplifting of the rents, the claimant's answer would probably be, that the rents continued to be drawn by the factor for the granter, whom he held to be accountable for the rents so drawn whenever he should demand them, that the possession of the factor was his possession, and that he considered himself entitled to enter into personal possession, if he so chose, at any moment of time.

11909. He

11909. He would not say he had any *bond fide* intention of entering?—He would merely say that he intended to continue the factor of the granter in the situation he at present held, drawing the rents of the subject; and that when an account came to be taken on the one hand, for the amount of the bill, and on the other for the amount of rents drawn, they would then strike the balance between themselves.

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11910. If I understand you rightly, it amounts to this, that no questions can be so framed but that the party examined may so avoid them as to prevent the court getting possession of the truth?—I am satisfied, from my experience in the Registration Courts, that it is so difficult as to be next to impossible to get at what one is morally convinced is the truth by any examination.

11911. Why should there be a greater difficulty in obtaining the truth in a Registration Court than in any other common court of justice, supposing your examination to be as unrestricted in the one case as in the other?—The examination is at present as unrestricted in the Registration Court, in one sense, as it is in a common court of law. In a court of law, if you refer the question at issue to the oath of the party, that oath is conclusive against you, and concludes all further examination.

11912. My question was this: why should it be more difficult to obtain the truth on an examination in the Registration Court than to obtain the truth in a common court of law?—I know of no reason further than this, that the examination in a Registration Court is not looked upon in so serious a light as an examination in a court of law, which involves the civil rights of parties.

11913. In fact, the oath taken in one court is more lightly regarded than the oath taken in the other?—I think there can be no doubt it is.

Veneris, 9^o die Februarii, 1838.

MEMBERS PRESENT.

Mr. Edward Buller.
Mr. George Hope.
Mr. Hope Johnstone.
Mr. Divett.

Lord James Stuart.
Sir Hugh Campbell.
Mr. Robert Steuart.

MR. HORSMAN, IN THE CHAIR.

John Clerk Brodie, Esq., again called in; and further Examined.

11914. Mr. George Hope.] I UNDERSTOOD you to say, in answer to an honourable member, that the understanding, as far as there was any in those cases with which you were acquainted, was in favour of the votes?—Yes, in so far as there was any expressed.

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11915. Now, I think there is a little inconsistency with the answer you gave me in the previous part, namely, that you conceived the understanding which existed in those cases was such as would be a legal bar in actions by representatives, though not by principals?—I did state so.

11916. You do not apply it to the cases to which you alluded in your last answer?—Yes, I do.

11917. In what way do you reconcile the two?—I distinguish between the real understanding of the parties, and that which is expressed. Very little passes between them, and they are too much alive to their own object to express any thing which, if brought to light in the Registration Court, might invalidate the vote; at the same time I apprehend the transaction to be really, in point of fact, a collusive one, and if this were proved in a court of law, effect would not be given to it.

11918. That answer of yours, as I understand it, assumes the proof of collusion; the point I wish to come to is, how that collusion is to be proved; supposing in the case you put, in which you say the understanding, as far as there is any expressed, is in favour of the vote, supposing that case, of either or both the parties to die immediately, would there be any defence on the part of the representatives of either party to the completion of that transaction?—I think, that if the real nature

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of the transaction was not known to the representatives, there might be considerable difficulty in the establishment of the fact in a court of law; but what I say is, that if the fact were established, there could be no doubt of the result.

11919. I think you again assume the point I wish to come to, namely, how the thing has been proved: my question goes to this; would it be possible in such a case, there having been no understanding expressed, to prove such an understanding?—I think, that if, in addition to the fact that the transaction is one of a collusive nature, having for its object purposes of registration, you suppose that there is an intention on the part of one of the parties to defraud the other, certainly the loose manner in which the transaction is carried through, would give very great facilities for the accomplishment of the fraud.

11920. I am not now asking these questions as to the intention of the parties as to fraud; the simple question I ask you is, whether, where no understanding is expressed, where no document exists, it could be possible for the legal representatives to do otherwise than enforce those obligations?—It appears to me you must assume one of two things; either that the transaction was collusive, or that it was not; if the transaction was not collusive, of course the representatives could enforce the obligation, and would do so; if it was collusive, and the representatives not in the knowledge of the collusion, they might still enforce the obligation, because, from the manner in which it was carried through, the surviving party might have difficulty in proving its true nature; but if the representatives were aware of the real nature of the transaction as well as the party himself, of course they could not enforce the obligation without committing a fraud.

11921. Does it not come to this; that in the common case which you put, namely, of there being no tangible understanding, the parties might subject themselves to the same legal liabilities that any other party contracting under similar circumstances would, putting aside all question of vote or registration?—There is no doubt that the parties run a risk, but, having confidence in each other, they consider the risk not to be material.

11922. Are these not cases in which, sooner or later, great inconvenience must be felt by parties engaged in such transactions?—Certainly; I think if the parties allow matters to go on upon a mere latent understanding for a period of years, they may ultimately find themselves involved in difficulties which they do not contemplate. At the same time, the fact that the transaction is carried through in all its details, in a manner totally different from transactions in ordinary business, of itself affords a considerable protection against such an inconvenience, because that fact affords material evidence of what was the true nature of the transaction.

11923. Does it, in your opinion, afford legal evidence?—I do not say it will, in every case, afford legal evidence, but I say it affords such strong moral evidence, as I think no honest man could run counter to.

11924. Do you consider that trustees, executors, or any parties filling representative characters, are safe in proceeding, or can be safe in proceeding on any but legal evidence?—Men who are acting for third parties have not the same discretion which they have when acting for themselves; but my opinion is, that there is in these transactions such strong moral evidence of their true nature, that even an executor or trustee under a settlement would be entitled to hold them as collusive, and therefore not having been given effect to.

11925. I assume you also practice as a conveyancer?—I do.

11926. Would you, as a conveyancer, accept any title with such life-rents appearing on them, without having required a previous re-conveyance or release of those life-rents?—I should not do so of my own responsibility; I should represent the circumstance to the purchaser, who would probably be disposed to continue the life-rents, or take a re-conveyance to them according as he agreed with, or differed from the life-renters in political opinion. I should add, that the search of encumbrances which I, as a conveyancer, would require to be exhibited to me by the agent for the seller, would not show the fact that life-rents existed, and that immediately on the seisin of my client being placed on record, the whole of these life-rents would, *ipso facto*, fall.

11927. The reason for which those life-rents would fall, is from enfeoffment not having been taken?—Exactly.

11928. Therefore, your observation would not apply to those in which enfeoffment had been taken?—No, it would not.

11929. Mr. Divett.] Am I to understand from what you stated, that unless an enfeoffment

enfcoffment is taken, the conveyance of the property on which life-rents are granted voids those life-rents?—The enfcoffment on that conveyance does so. *John Clerk Brodie, Esq.*

11930. Then, in fact, all the life-rents, supposing they are good in law until the day on which a new enfcoffment is taken, are from that date void?—They are. *9 February 1838.*

11931. All the life-rents granted previous to the time of the conveyance and enfcoffment?—The very moment that an enfcoffment on a new conveyance is placed on record, the whole of the life-rents become void, always on the supposition that enfcoffment on them has not been taken.

11932. Mr. *Edward Buller*.] Will you state by whom that new conveyance must be made in order to defeat these life-rents?—The result may be brought about voluntarily, or by the diligence of creditors; either, the party granter of the life-rent, or his representative, may grant a conveyance to a purchaser, in which case the enfcoffment of the purchaser will void the life-rents; or, without any act at all on the part of the granter of the life-rents, or of his representative, the creditors of these parties may adjudge the estate for debt, and upon that adjudication obtain an enfcoffment which will also void the life-rents.

11933. And in neither of these cases will the consent of the life-renters be required?—Certainly not.

11934. In fact, they are divested of their right without being in the slightest degree consulted?—They are.

11935. Mr. *Divett*.] Then, we must understand from this, that a conveyance may be made of property for the purpose of creating votes, without giving any legal right whatever beyond the immediate object for which it is made?—Certainly; one material feature of these life-rent cases is, that the life-renters never take enfcoffment; another is, that, in very many instances, no warrant for enfcoffment is contained in the disposition; so that the life-renters have not the power of taking enfcoffment, even though they wished it, without resorting to a tedious process at law, before they can complete which, other parties may come in.

11936. What is the nature of this process of law to which the life-renters must have recourse, to make themselves secure in the possession of their life-rent?—It is an adjudication in implement of the conveyance they have obtained; and supposing the transaction to have been collusive, of course the party granter of the life-rent might prevent them for a long period from obtaining that adjudication; which is, at all events, in itself a tedious process.

11937. When you say a tedious process, what time should you suppose it might require to effect a settlement, if the granter of the life-rent was disposed to dispute it?—It might take an indefinite time.

11938. How will these observations you have made with reference to the position in which a life-renter holding the original life-rent stands, apply to a third party. Supposing there was a re-grant of the life-rent to a third person, would he be in the same position with reference to his title?—He would, unless the life-renter had taken enfcoffment.

11939. Would there be any difficulty in his taking enfcoffment?—He could not take enfcoffment, for nobody but the life-renter can be enfcoffed on a life-rent disposition.

11940. Do you mean to say, that the only person who can take enfcoffment is the original grantee of the life-rent?—I do.

11941. Mr. *George Hope*.] Perhaps you will explain a little more the nature of this enfcoffment; if I understand the principle right, it is the old principle of the feudal law; that in order to perfect the right to any land, there must be a corporeal delivery of the land to the person to whom it is granted?—Yes.

11942. The principle on which enfcoffment can only be granted to the life-renter is, that he is the person who at the moment is entitled to that corporeal possession?—Yes.

11943. That observation with respect to enfcoffment applies equally to every kind of purchase of land in Scotland?—There is this peculiarity in the enfcoffment on a life-rent disposition, that no one but the life-renter can be enfcoffed. Upon an absolute disposition of land, not only the first grantee or his heirs, but his disponent, or any person taking from him, may be enfcoffed; but though a life-renter may assign his life-rent, it is not in the power of the assignee to take enfcoffment.

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11944. Then it is not always the person who is immediately entitled to the possession of the land that is entitled to the enfeoffment?—The case of an assignee to a life-rent forms an exception.

11945. The general principle, however, is, that, under the feudal law, which I believe prevails in Scotland, in order to perfect a good title to land you must have delivery of it?—Unquestionably, that is the case.

11946. Therefore, this applies generally to the whole transaction of passing landed property in Scotland, that no purchaser whatever is safe, unless he takes enfeoffment?—He is not absolutely safe, unless he takes enfeoffment.

11947. The objection to taking enfeoffment arises, I believe, from the expense of it?—The expense is a very great objection.

11948. It is a subject to which a great deal of attention has been turned by some of the late law officers?—It is hoped by the profession that the expense of enfeoffments may at no distant time be considerably moderated.

11949. The effect, I believe, has been that, notwithstanding the risks encountered, it has been a very common practice for a number of years for parties on small properties not to take enfeoffment?—It often happens that they do not take enfeoffment for several successive generations.

11950. Mr. Divett.] Do you mean to say that in transactions not with any reference to conveyance for the creation of votes, the practice exists in Scotland of not taking enfeoffment?—Yes; I refer to *bond fide* cases, of small transactions. In large transactions enfeoffment is always taken.

11951. When you say small transactions, to what extent do you refer. In treating of small transactions, do you mean that the expense bears so great a proportion to the value of the purchase, that it cannot be afforded?—That is one main reason of enfeoffments not being taken in the cases to which I allude. The cases to which I principally allude are those of small feuars in Scotch villages.

11952. Principally in the lower classes of life?—Yes.

11953. Almost approaching a state of indigence?—Not by any means; in their own way they may have a competency, but still they are parties to whom expense is a considerable object.

11954. Have you known any case at all in which enfeoffment has been taken subsequent to transactions which were effected for the purpose of the creation of votes?—Enfeoffment is frequently taken on absolute properties acquired for political objects, those properties being burthened with heritable debt; but I have never known a case in which enfeoffment was taken on a life-rent.

11955. Supposing a person is anxious to procure a vote on actual purchase, without possessing himself of property which would give him trouble in the management, would he get a vote in this manner; I am speaking of one actually procured *bond fide* for money paid; would he then go through the process of enfeoffment?—I think, if he was a man to whom the expense of two or three pounds was not an object, he would most unquestionably take enfeoffment.

11956. You have not known, in the course of your experience, transactions of that sort?—In the case of life-rents I have not.

11957. Mr. George Hope.] You spoke just now of never having known any transactions in which enfeoffment has been taken; I suppose you confine yourself to your own circle, the county of Edinburgh; you have no personal knowledge beyond?—I have no actual knowledge beyond the county of Edinburgh; but, having taken an interest in observing the progress of the system, I have engaged as to the practice in other counties, which I understand to be exactly the same as in the county of Edinburgh.

11958. Perhaps you have read the First Report of the Evidence given before this Committee?—I have.

11959. You find that a good many questions have been put, and a good deal of discussion raised as to the parties by whom life-rents and other votes have been created?—Yes.

11960. Now, I am informed you can give us some valuable information on that subject, as regards the county of Edinburgh?—I should be happy to afford the Committee any information in my power.

11961. Taking, for instance, the different years, can you give the numbers made by each party, beginning with the joint proprietors?—I can. Do you mean me to give you the gross number of joint proprietors enrolled on either side in each year, or do you wish me only to give you those which were made with a political object?

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11962. To prevent confusion, I think you had better give the whole, and then separate?—In the year 1833, (which was the first year after the Reform Act,) there were 16 joint proprietors of Tory politics enrolled, and three of the Liberal party. Of the 16 Tories, I consider at least 15 to have been made with a political object, but none of the Liberals were made with that object. In the year 1834, there were four joint proprietors of Tory politics enrolled, and three Liberals; of the four Tories at least two, perhaps three, were made with a political object, but there were none on the side of the Liberals. In the year 1835, there were 26 joint proprietors of Liberal politics enrolled, and three of Tory politics: of the 26 Liberals, I think 20 were made with a political object, and the whole of the Tories were made with that view. In the year 1836, there were 50 joint proprietors of Tory politics enrolled, and 48 of Whig politics; of the Tories, I think 46 were made with a political object, and of the Liberals, 44. In the year 1837, there were 52 joint proprietors of Tory politics enrolled, and 31 of Whig politics; of the Tories, I think 49 were made with a political object, and of the Liberals 27.

11963. Will you state the same facts as to the life-renters?—In my list of the life-renters I have separated the ministers and schoolmasters from the rest of the constituency. The total number of life-renters enrolled in 1833 was 14; of these 9 were life-renters *ex officio*, being ministers and schoolmasters, and the remaining 5 were all Tories; of these 5, I consider 3 to have been made purely with a political object. In the year 1834, the total number of life-renters enrolled was 13; of these 6 were ministers and schoolmasters, and of the remaining 7, 5 were Tories and 2 Whigs; the whole 5 Tories were made purely with a political object, but I conceive neither of the Whigs to have been so. In the year 1835, the total number of life-renters enrolled was 36; of these 11 were ministers and schoolmasters, and of the remaining 25, 19 were Tories and 6 Whigs; of the 19 Tories, I consider, at least, 16 to have been made with a political object, and of the 6 Whigs, one. In the year 1836, there were 59 life-renters enrolled; of these, 4 were ministers and schoolmasters, and of the remaining 55, 41 were Tories and 14 Whigs; the whole 41 Tories, and 11 of the Whigs being made with a political object. The total number of life-renters enrolled in the year 1837 was 85; of these only 2 were *ex officio* life-renters; and of the remaining 83, 31 were Tories and 52 Whigs; all of them created with a political object.

11964. State the same facts as to the joint tenants?—The total number of joint tenants enrolled in 1833 was 8; of these 5 were Tories, and 3 Liberals. I believe none of the Liberals to have been made with a political object; and there is only one of the Tories that I think may have been so. The total number of joint tenants enrolled in 1834 was 15, of these 9 were Tories, and 6 Liberals; I do not think any of the Liberals were made with a political object, nor do I know that any of the Tories were so, except one, who certainly was. In the year 1835 the total number of joint tenants enrolled was 18, of these four were Tories and 14 Liberals; of the Tories, a life-rent tenant on a 10*l.* qualification was made with a political object, and 2 of the Liberals, who were enrolled on a long lease were so also; I do not know that there were any more. The total number of joint tenants enrolled in 1836 was 23; of these 11 were Tories and 12 Liberals; of the Tories, there were at least 3 made with a political object, but I do not think any of the Liberals were so. The total number of joint tenants enrolled in 1837 was 21. Of these 7 were Tories and 14 Liberals; but I am not able to say that any of them were made with a political object, though it is very probable they may have been so. I would wish to explain, that the tables I have before me, in so far as regards life-renters and tenants, do not contain the analysis I have now given, and that therefore I cannot vouch for its perfect accuracy. I am certain, however, it is very near the truth.

11965. Then it appears, according to my calculation, that up to the year 1836 they run about neck and neck, 67 to 64 made for political purposes on both sides?—If you take those four years in slump it may be so, but I have stated that in 1833 and 1834 there were no joint proprietors at all made on the Whig side with a political object.

11966. *Chairman.*] Was there a general election at the end of 1834?—There was.

11967. Did the contest at that election end by the Liberal candidate, who had been previously returned, being displaced by a Conservative?—It did.

11968. And was that result attributed to the sort of joint-proprietors who had been

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been created in the previous year?—It was attributed to the votes made by the Tories for political objects in those years.

11969. And it was after that, the increase on the other side began?—It was.

11970. Mr. *George Hope*.] Have you an analysis of the poll-books for 1834?—I have not.

11971. Do you know the majority in 1832, the first election; I believe Sir John Dalrymple was returned?—He was; I am not quite certain of his exact majority, but, I think, it was 69; I speak from memory.

11972. How many altogether appear to have been made for political purposes by the Conservative party in the year 1833?—I think, 20.

11973. Therefore, in the year 1833, there appear to have been 20 made for political purposes, according to your statement, by the Conservative party?—I think there were 20 made by the Conservative party, and none by the Whigs.

11974. What number appear to have been made by the Conservative party in the year 1834?—I think, 8.

11975.—Those two numbers include the voters of all descriptions, both life-renters, joint tenants, and joint proprietors?—Yes, I think the whole amount to 28.

11976. Have you by you the majority of the electors in 1834?—It was 28.

11977. In what way do you judge of the object with which the votes were made; I presume, in your own party, you knew exactly?—I did.

11978. In what way do you judge of those of the other party?—I had no doubt they were made with a political object, being of the description of votes, the nature of which I explained to the Committee on a former day.

11979. Were they avowed?—Yes, on both sides.

11980. *Chairman*.] And were they of that sort of qualification which had been unknown until 1832, and not usual in regular transactions?—They were.

11981. Mr. *George Hope*.] Taking the joint proprietors, admitting that the mere fact of purchasing for the sake of a vote does not destroy the transaction, have you any reason to believe that the purchasers, in the year 1833, were not *bonâ fide*?—I have not; it is quite possible that the price may have been paid.

11982. The objection, therefore, to that class of voters was the property having been acquired for the purpose of obtaining a vote?—The properties were not only acquired with the object of making a vote, but in a manner different from any thing that had been previously known.

11983. But, except in being different from what had been previously known, was there any thing to lead you to suppose that the price had not been paid, or the transaction was not *bonâ fide*?—I have already said that I had no reason to suppose that the price was not paid, or that the property was not transferred to the voters.

11984. Pray, were those parties principally resident or non-resident within the county?—They were chiefly advocates and writers in Edinburgh; and four of them were servants of the Duke of Buccleugh, one being his steward, one his groom, one his gardener, and the fourth his upholsterer.

11985. Were those persons whom you have referred to, servants of the Duke of Buccleugh, in a situation of life in point of property, as far as your observation could go, below that of a large proprietor of such property?—I know nothing personally of their circumstances, but I presume them to have been just the description of persons which, from their station in life, you might naturally suppose them.

11986. Is it not a very common thing for persons in Scotland of that rank of life, by which I mean not persons merely in service, but persons who have some little money of their own, to invest it in a house, either for themselves or as an investment?—They may invest it in an individual house; but, before the Reform Bill, I never saw an instance in which they all clubbed together and bought a joint property.

11987. It is assumed, in the numbers you have given, that this was done for the purpose of acquiring a vote?—It is.

11988. *Chairman*.] The joint proprietors you have spoken of in that year, were they in batches?—They were in three batches; one of 2, one of 4, and one of 9; the fifteenth was a joint proprietor of the Torsonce inn.

11989. Mr. *George Hope*.] What did the batch of four consist of?—The four servants of the Duke of Buccleugh.

11990. With respect to the life-renters, I think you stated yesterday that the acquisition of a life-rent for any purpose, except political purposes, was very uncommon?—I stated that the acquisition of life-rent by grant was so.

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11991. For what object do you apprehend those life-rents to be acquired, which appear by your statement here not to have been acquired for political purposes?—Those which I have stated I conceive were acquired for political purposes were all life-rents by grant; there are no life-rents by grant included in the remainder.

11992. That applies to both sides?—Yes.

11993. In point of fact, was the test you took of the object in these cases the acquisition by grant or not?—I never met with a case of a life-rent acquired by grant, which I did not conceive to have been acquired with a political object.

11994. I omitted to ask you in respect of the joint proprietors in the years 1835, 1836 and 1837, were they made in large batches, or were they made in smaller batches, on both sides?—In 1835 there was one batch of six; none of the other batches exceeded 2; in 1836 there was one batch of 12, one of 16, one of 14, one of 5, two of 3, and two more of 7, each; in 1837 there was one batch of 16, one of 14, one of 8, one of 7, one of 6, two of 5 each, one of 4, and one of 3.

11995. In what way were the life-rents created?—In 1833 there were two joint life-renters enrolled in one batch; in 1834 there was one batch of 3, and one of 2 joint life-renters; in 1835, there were two batches of 2 joint life-renters, and one of 3; in 1836, there were six batches of 2 joint life-renters each, two batches of 3 joint life-renters, and one of 5; in 1837, there was one batch of 28 joint life-renters, one batch of 7, one of 6, two of 5, two of 3, and ten of 2 each.

11996. There was one batch of 28; on which side were they created?—They were created by the Whigs.

11997. By whom was this created?—By Mr. Forrest, of Comiston.

11998. In the case of both joint proprietorships and life-rents, in order to render the right secure, enfeoffment is necessary?—Neither a joint proprietor nor a life-renter is absolutely safe, unless he is enfeoffed.

11999. Were there any number or any of either joint proprietors or life-renters who were enfeoffed?—Many of the joint proprietors were enfeoffed; but, so far as I know, not one of the life-renters.

12000. Does the observation respecting joint proprietors apply to both sides?—Yes.

12001. Does it preponderate on either?—I have made no minute calculation; but I think the system has latterly been going on, on both sides, very much in the same way.

12002. *Chairman.*] Have you yourself been very instrumental in carrying it on?—I have.

12003. Have you had an opportunity of knowing the general feeling among proprietors on the subject of carrying on this system?—I have; I may mention to the Committee, that at a very early period I thought I foresaw the height to which the system would ultimately be carried. In the years 1833 and 1834, votes had been made on the Tory side in all the different shapes in which they have since been known. They enrolled several batches of joint-proprietors in 1833; and continued the system in 1834, though certainly to a less extent. They enrolled life-renters and joint life-renters by grant in 1833, and continued to do so in 1834; and, in the same year, they enrolled a joint tenant upon a qualification which was quite out of the usual way, and which I conceived to be one capable of being rendered very formidable as an engine of fictitious creation. I thoroughly disapproved of the system, but if it was to be carried on on the one side I thought it absolutely necessary that the other would resort to it in self-defence. I therefore stated to the gentlemen of the county, that they ought, in my opinion, to follow the example which had been set them; but I found one and all of them extremely averse to it, and, at first, I could not prevail upon them to enter upon the system at all; at last they did so, but they refused to create any votes the price of which should not be actually paid; and though I, over and over again, pressed on them the necessity of going further, and of creating votes in all the different ways which the sheriffs had held to be within the statute, it is not till very recently that they have come to be of opinion that that will be necessary, unless some remedy is provided by the Legislature. I can state, however, of my own personal knowledge, that one and all of them have now come round to that opinion, and if the system is not speedily put an end to, there is no doubt they will all cover their estates with these life-rent qualifications.

12004. *Mr. George Hope.*] They are proceeding to do so in the county of Edinburgh as fast as possible?—I believe they are doing so on both sides.

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12005. Have

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12005. Have you any reason to know that they are doing so on the Conservative side?—I cannot know it, because, until the Registration Court of 1838 holds, I shall not be acquainted with their proceedings. If reports are true, we shall have a large number upon that side in the current year; and, no doubt, there will be votes of the same description on the Whig side also.

12006. *Chairman.*] On the Whig side, do you know what is likely to be done from taking charge of the registration?—I do not, from that cause, for I have ceased to take charge of the registrations.

12007. *Mr. George Hope.*] Do you know, without any charge of the registration?—I know that the same system which has been carried on for years is still continuing.

12008. You stated that the parties on the Whig side could not be induced to create these votes without *bond fide* payment of the money?—I stated that, at the commencement of the system, the landed proprietors of Whig politics in the county could not be persuaded to make votes upon their properties at all; and that when they did commence the system,—which they did not do until after the creations which had been made by the Tories in 1833 and 1834,—they made no votes the price of which had not been *bond fide* paid. I also stated that it was not until very lately that they had been led, by the progress of the system, to entertain different views.

12009. *Chairman.*] Then, when you speak of landed proprietors on the Whig side who have created votes in this manner consisting of the money paid, do you mean that has been generally done by the landed proprietors on the Whig side, or do you know whether any of the large proprietors have refused, under these circumstances, to create any votes?—I know that some of the largest proprietors have refused to create any votes at all. Sir John Dalrymple, who has unentailed property in the county to the extent, I believe, of 3,000 *l.* a year, has not created a single vote. And Sir James Gibson Craig, who has unentailed property in the county to the extent of some 5,000 *l.* or 6,000 *l.* a year, has not registered a single life-rent vote.

12010. My question is, whether what you have stated of the proprietors applies to them generally, that in a body they agreed to create such votes as you mentioned where the money was paid, or whether that determination had not been partly carried into effect, whether it has been done individually, or whether it has been done generally?—Certain of the gentlemen of the county resolved at the time I mentioned to make votes, stipulating always that the price should be paid; but there were other gentlemen in the county who would not accede to this, and who have not made votes to this day.

12011. *Mr. George Hope.*] The point to which I wish to direct your attention is this: I understood, in your former evidence, that in the creation of life-rent votes, according to your experience, the money was not generally paid, but bills were taken?—In the great majority of the life-rent cases no money was paid.

12012. Therefore your observation with respect to the determination not to create the votes without receiving the money, does not apply to these cases which you have now detailed?—My statement was strictly correct. The only life-rents created by landed gentlemen of Whig politics up to the year 1837 were created by Mr. Murray, of Henderland; he created life-rents both in 1836 and 1837, and in every instance the money was truly paid. The only other life-rents made by a landed gentleman of Whig politics, in the county, are those which were made in the year 1837 by Mr. Forrest, of Comiston. In some instances the money was paid to Mr. Forrest, but in the great majority of cases, the price was settled by bill.

12013. How did the observation of payment of price apply to the joint proprietors; were the transactions in those cases generally settled by cash or bills?—I think the majority of the joint proprietors were enrolled on property burthened with debt; the balance of the price was, in general, settled in cash.

12014. The balance of the price was generally very small?—Very small.

12015. Does that apply to both sides?—Yes.

12016. You stated that there was one case of joint tenancy in 1833, which you thought capable of being carried to a very great height?—Yes.

12017. Were your expectations verified?—This description of vote has occurred in no instance but the one to which I have alluded; but I think it capable of being carried to a very great extent; and, if life-rents were abolished, and this species of qualification allowed to remain, I have no doubt it would be carried to a very great height.

12018. *Chairman.*]

12018. *Chairman.*] When you spoke of the evil which you apprehended as likely to arise from this system which you alluded to of joint tenancies, of life-rents and other votes, did you go entirely from your own experience, or were you at all led to your conclusion from what you know took place in other counties?—*John Clerk Brodie, Esq.*
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I by no means went entirely on my own experience; although the system had been commenced in Mid-Lothian, it had not been carried there to any thing like the height which I knew that it had reached in other counties; but I could not doubt that the same thing would come, ultimately, to be done in Mid-Lothian which had been done elsewhere.

12019. *Mr. George Hope.*] What was the case of joint tenancy to which you particularly referred?—A gentleman, who had a small property in the county, granted a lease, of, I think, an arable subject, worth about 20*l.* a year, to two of his sons jointly, for their respective lifetimes, and upon that qualification they were enrolled.

12020. You say that the joint tenants did increase, although you do not put it down to political causes; to what cause was it, can you state?—You have mistaken me, if you suppose that I do not attribute the increase of joint tenancies in the county to political causes. I have mentioned only such cases as political as I thought were plainly so, but I have no doubt there were a great many others, and that, in numerous instances, sons and other near relations were taken into the lease by their fathers and kinsmen without having any beneficial interest in the profits of the farm, and with no other view but their being enrolled as voters.

12021. We are not to understand from that that they had not acquired legal rights in the farm, but you considered there was some private arrangement or understanding between the parties, which would not entitle them to the full benefit of the beneficial interest?—I conceived it to be fully understood between them, that the right of the original tenant was to remain as it was, although, perhaps, in a legal point of view, the party assumed might be bound to the landlord for the rent.

12022. Pray would not the consequence of that legal obligation come to be extremely inconvenient in a great number of cases; might not a party be sued for the rent, and might he not also claim possession of the farm?—I think that, except with a political object, no one would be inclined to enter into such transactions.

12023. But the consequence of entering into it with these views might be an extreme inconvenience to the parties?—Certainly I think, in some cases, it may have inconvenient results.

Lunæ, 12^o die Februarii, 1838.

MEMBERS PRESENT.

Mr. Divett.
Mr. George Hope.
Mr. Walter Campbell.

Mr. Hope Johnstone.
Mr. R. Steuart.
Mr. E. Buller.

MR. HORSMAN IN THE CHAIR.

John Clerk Brodie, Esq., again called in; and further Examined.

12024. *Mr. George Hope.*] WITH reference to the payment of money by Mr. Murray of Henderland, without going into details, do you know the circumstances of any of the parties that purchased?—I know that they all paid the money. *John Clerk Brodie, Esq.*
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12025. You misunderstand my question; do you know the circumstances of any of the parties who were purchasers in that case?—Do you mean their pecuniary circumstances?

12026. Yes?—I think they were all in circumstances to purchase a vote without the least inconvenience.

12027. Have you or have you not any reason to know or to suspect that the money for the purpose of those purchases was advanced to any of those parties?—I have reason to believe that they paid every farthing of it out of their own pockets.

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12028. That no part of the money that was paid by them was borrowed for the purpose from other people?—I believe no part of it was, except in one instance.

12029. *Chairman.*] In the present state of vote-making in Scotland, what are the evils which you think particularly require a remedy?—I think there are two evils which it is most important not to confound with each other; the one is the overwhelming of the local constituencies by non-resident voters; the other is the creation of collusive and fictitious, or improper votes.

12030. Have you found the great majority of those objectionable voters are non-resident?—By far the greater proportion of them are resident without the Parliamentary bounds of the county.

12031. In what way do you particularly see the bad effect of that?—I think that, in the first place, you do not obtain what is really the voice of the county in the choice of its representatives; for the voice of the county is drowned by a set of political partisans having no interest whatever in its local concerns; and in the next place, the consequence of this is, that the feelings of the local constituency are irritated, because they feel that, though they nominally exercise the franchise, they do so to no purpose, their voices being drowned by a parcel of strangers.

12032. Is there any possibility of preventing that?—I think the remedy is very simple; it is the enforcement of residence.

12033. In every case?—I think an exception might be made in favour of proprietors having property to the extent of 100*l.* a year, without diminishing the effect of the provision as a remedy; I give no opinion whether such a distinction would be proper, or might not be invidious; but perhaps it may not be necessary to carry the remedy further than is necessary to obviate the evil.

12034. *Mr. Hope Johnstone.*] That would be, in fact, the introduction of an entirely new principle as to the qualification?—There is no doubt that under the Reform Act, as it at present stands, residence is not necessary; but I do not think it would be introducing an entirely new principle.

12035. Will you point out whether that principle is recognised in England?—It is not recognised in county constituencies either in England or Scotland; but I cannot call it the introduction of a new principle, for I find the principle in towns, and I would merely transfer that principle to counties.

12036. My question is, is it a principle recognised with regard to the qualification in England?—Not except in burgh constituencies.

12037. *Chairman.*] The object of dividing the constituency into districts, and giving counties members for themselves, is, that the interests of that district may be attended to by representatives chosen by persons who have a concern in it?—Unquestionably it is.

12038. You conceive that to be the principle of the division of counties?—I do.

12039. And may it not be said that that principle is interfered with, if the choice by a local constituency of the representative who best takes charge of their interests is swamped by an inundation of strangers?—Certainly. I will give the Committee an illustration. I will suppose that, in the neighbourhood of any large town, such as Edinburgh, Aberdeen or Inverness, there are several counties, the majority in each of which, on a particular side of politics, varies from 20 to 80; it is quite possible for 100 men, resident within the town, to take votes in each of these counties, and thereby entirely to invert the order of things which formerly existed; for, whereas before, you had the true feeling of the county, now, the feelings of the county are drowned, and you have only the nominees of the 100 men who take these votes; and thus you give the burgh not only its own representative, but the representatives of half a dozen counties in its neighbourhood besides.

12040. *Mr. Hope Johnstone.*] Does no remedy suggest itself to you, except the enforcing of residence?—I do not think you can prevent the overwhelming of the local constituencies, except by the enforcement of residence.

12041. Can you form any idea as to how you would require residence?—I would require the same kind of residence in counties as in burghs.

12042. Then in case of a proprietor possessing property of 50*l.*, 60*l.*, to 70*l.* a year in two or more counties, he would only be able to vote in one?—If he had only one residence, he would; but if you consider how the statute at present operates, you will find that it does not always operate equally; for instance, a man may, at present, have 20,000*l.* a year situated in one county, and he

he has but one vote; but another may acquire property to the extent of 10*l.* a year in half a dozen different counties, and have half a dozen votes. *John Clerk Bredie, Esq.*

12043. Do you conceive the meaning of the Reform Bill to be, that if a man had property to the extent of 10*l.* in several counties, he should not vote in each of them?—I think it very probable that the framers of the Reform Bill did not contemplate the evil which has been occasioned by the swamping of local constituencies by non-resident voters. 12 February 1838.

12044. Do you conceive that was the intention of the Reform Bill?—No; I have no doubt that the framers of the Reform Bill contemplated that every man who had 10*l.* a year in a county should be registered, whether he was resident in the county or not.

12045. *Mr. George Hope.*] You point out the enforcement of residence as a guard against swamping the local constituencies; do you consider that the enforcement of residence would obviate all the objections to qualification which you have already given us?—I think the enforcement of residence would be a sufficient protection to the local constituencies, and I think it would also have some effect in preventing the increase of collusive qualifications; but certainly, in order to put an end to the system of creating fictitious and improper votes, you must resort to other remedies. The two things however should not be confounded; it should always be kept in view that there are two objects; one, to prevent the swamping of the local constituencies; and the other, the creation of collusive or fictitious qualifications.

12046. Then, in your view, the intention of the Reform Act, or the spirit at least, must have been, not to represent the property in the county, but to represent the persons locally resident?—I am not speaking of the object of the Reform Bill. I have already said that I think it probable that the framers of the Reform Bill did not contemplate the evils which have been found to exist; but I am speaking of the remedies which should now be resorted to for evils which have been proved.

12047. Therefore I am to understand the evidence which you are disposed now to give, not to go so much to the correction of any abuses which have arisen under the Reform Bill, but to point out a new system?—By no means; I think that if the framers of the Reform Bill had contemplated the evils which have been found to exist, they would have provided for these evils; but I think they did not contemplate, and therefore did not provide for them.

12048. You are now to point out a course different at least from that which was taken by the framers of the Reform Bill?—I am introducing a remedy; it must therefore be something different from the state of things which previously existed.

12049. You stated you were a writer to the signet?—I am.

12050. Have you been so long?—I only passed as a writer to the signet in November 1836.

12051. Are you a writer to the signet now on your own account?—I am not.

12052. In whose employment are you?—Of Sir James Gibson Craig.

12053. You are one of the clerks in Sir James Gibson Craig's office?—I am; I take the sole charge of Sir James Gibson Craig's Court business; and I have also some superintendence of the conveyancing department.

12054. Sir James Gibson Craig is the father of the present Member for Edinburgh?—Yes.

12055. *Mr. Edward Buller.*] Your view with regard to the enforcement of residence is to prevent the swamping of the local constituency?—It is.

12056. Even with the enforcement of residence, would it not be perfectly easy for any proprietor to have recourse to the present system of creating life-rent votes amongst the residents within the county, so as to control the election?—The enforcement of residence would have a comparatively trifling effect in preventing the creation of collusive or improper qualifications. In order to prevent those evils, you must resort to other remedies. But supposing remedies to be found, by the adoption of which proprietors shall be prevented from creating fictitious qualifications, I think there is no evil in parties, who are resident within the county, obtaining qualifications, provided these qualifications are fair and *bonâ fide*; indeed, the more of them were obtained I should think the better, because the more the franchise can be fairly extended, the better for the constituency.

12057. What is the objection to persons possessing a vote for a county, if that vote is based on a *bonâ fide* qualification, even though they should not reside in

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the county?—My objection is this, that a number of individuals, totally unconnected with the county, may bind themselves together, and, by acquiring votes in it, may turn the majority previously existing on one side of politics, and thus drown entirely the voice of the local constituency; and that, in this way, instead of having (as you had before) a representative of the county constituency, you have only the representative of these political partisans.

12058. But if these persons who create voters or make votes be residents in the county, inasmuch as they represent an interest, do they not represent the local interest in the county?—I think it just comes to this, that a proprietor who has such a strong political bias that he will actually split down his estate into fractions, in order that each fraction may produce a vote, obtains more than his due share of political influence, if, as is most likely, other proprietors of equally large, or much larger estates, do not choose to resort to the same system. Further, I think you do a positive evil in another point of view; because certainly the splitting down of estates into fractions is by no means a desirable thing in the view of general economy.

12059. Do you prevent that mischief by enforcing residence? Is it not clear that it would be perfectly easy to find persons who would be willing to take this qualification, and vote according to the dictates of the landlord, the grantor?—I think not. But you would at all events diminish the evil, and, in my opinion, almost eradicate it.

12060. Mr. *Robert Stewart*.] Is it not a fact, that you cannot get parties resident in the county to take these votes, and you are obliged to go out of the county to create them?—Unquestionably it is; and that is just the remark I was proceeding to make.

12061. Mr. *Edward Buller*.] Will you explain why that is?—Because those parties in the county who are able to lay out money in order to obtain votes, have got them already; and I believe there is no political agent in Scotland who will not tell you that almost all the votes which have hitherto been created for political purposes, have been created by parties not resident in the county, but resident in some large town. I think the tables already submitted to the Committee in a great measure prove that; and certainly those of the Mid-Lothian constituency, which I am to submit to you, bring out that fact in a very strong light.

12062. Mr. *Robert Stewart*.] Does not this system of creating fictitious votes give a person who holds his estate in fee a great advantage over a proprietor who may have twice the property, but holds his estate strictly entailed?—There is no doubt it does. But I wish it to be understood, that I am not speaking at this moment of fictitious votes; I am supposing the votes to be perfectly fair and *bond fide*.

12063. I am aware of that; but does not this system of subdivision enable a proprietor who holds his estate in fee-simple to swamp the influence of the largest proprietors in the county who may happen to have their estates entailed?—There can be no doubt of it. And that evil is brought out in a strong light, when you consider the immense proportion of entailed property in Scotland, compared with the unentailed.

12064. Mr. *Edward Buller*.] The enforcement of residence would not in any degree correct that?—I think the enforcement of residence would prevent it to a very great extent, because, as I have just stated, it is not found to be possible to obtain any larger number of people, resident in the county, to take these votes.

12065. Supposing a proprietor to be in possession of an unentailed estate, and willing to create votes, and to create them as the life-rent voters are now created in Scotland, would there be any difficulty in going to any one of the villages of the county, and finding a sufficient number of persons to take those votes?—If you suppose the present system of creating collusive and fictitious votes to continue, he could find no difficulty whatever; but I proceed on the supposition that you eradicate the present system, and allow no man to obtain a vote who does not fairly pay the purchase-money: If that were done, I am clearly of opinion he would fail.

12066. Then you consider it merely to be substantially an evil that any person should be allowed to obtain a *bond fide* qualification and vote for a county where he does not reside?—I think that in itself it may be no great evil, but that it comes to be an evil of most serious magnitude when reduced to a system, as it now is

in Scotland, and when a number of non-resident individuals band themselves together, and turn the majority in those counties, by acquiring votes in them. *John Clark Smith, Esq.*

12067. But is not the real reason why you are in Scotland so anxious to create votes, the smallness of your constituency?—It is the smallness of the majority on one side of politics or the other. 12 February 1838.

12068. *Chairman.*] Does the smallness of the whole constituency in the county not render it easy to swamp them?—There is no doubt it does; at the same time I do not know that, by any extension of the franchise, you would do much to eradicate the evil. Supposing you make the qualification 5*l.* instead of 10*l.*, the consequence is, that you enable proprietors to split down their estates into still more minute fractions. Again, if you join one county with another, which is another mode of enlarging the constituency I have heard proposed, I think the consequence is a plain injustice; one of the counties joined may be nearly equally balanced, while, in the other, there may be a large preponderance on one side of politics; and the consequence is, that the one county is just merged in the other and deprived of its franchise.

12069. *Mr. Edward Buller.*] Does not the objection tell equally against any alteration of constituency in the kingdom?—I do not see it.

12070. Does not that objection apply to your proposed remedy of enforcing residence, that you cut off from that constituency of a county a portion of that constituency, the effect of which is to create an entire change in the opinion of the majority?—Not unless the principle is made to operate retrospectively, which is a point I am not at present considering. No doubt, if it was made retrospective, it might have the effect of turning the balance on the one side or the other; but you will observe, that, if it was wrong, in the first instance, that non-resident voters should come in and drown the voice of the county, there may be no impropriety in remedying that evil by deleting the non-resident voters from the roll.

12071. *Mr. Hope Johnstone.*] You state in point of fact the narrowness of the majority, in some instances, has more effect in inducing people to make votes than the absolute number of the constituencies?—Yes, that is my opinion.

12072. *Mr. Edward Buller.*] Does not the actually small number of the constituency have a material effect in inducing parties to create votes?—Certainly, it does.

12073. Why?—Because, where the constituency is exceedingly small, as in many counties in Scotland it is, it is no difficult matter to create such a number of non-resident votes as will effectually swamp the local constituency.

12074. Where the number is small, you are better able to calculate how each person is to vote?—Certainly.

12075. Whereas in a very large constituency it is impossible to say what the effect may be of any change of opinion in the constituency; when you have an extremely small constituency, you may have a constant supervision over that constituency?—There is no doubt that, in small constituencies, such as that of the county of Selkirk, for instance, the parties know, almost to a man, how each individual will vote. In large counties you cannot do so to the same extent, but you may make a very close approximation to the actual result. I believe it to be true that, in the very large constituencies which you have in England, change of opinion has a very considerable effect; but I do not remember an instance in Scotland, since the Reform Bill, in which any great alteration has been effected simply by a change in the opinions of the constituency.

12076. As far as your own sphere of information has gone, has this practice of creating votes been resorted to in small or large counties?—In some of the larger counties it has not been carried to any great extent; but even in Perthshire, which is one of the largest in Scotland, I am told that the system is making its appearance; and I can very easily believe it; because, although you have there a very large constituency, parties are pretty equally balanced.

12077. You are aware, are you not, that the facilities of creating votes in England are quite as great, if not greater, than they are for creating votes in Scotland?—I believe they are.

12078. Are you also aware that it has not been practised to any great extent in English counties?—No, I am not aware how that fact stands.

12079. You cannot assign any reason why it has not taken place in England, when it does take place in Scotland?—I cannot.

12080. *Mr. George Hope.*] What is the actual number of the constituency of the county of Edinburgh?—The actual number at present on the roll is about 1,860.

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12081. You spoke of bands of persons in the large towns being concerned in these transactions; is the number of persons so numerous that it is possible for those bands to increase much?—Certainly; I think they may increase to a very great extent indeed.

12082. Speaking of your general knowledge, are you not aware that most of the violent partisans of both parties have already taken votes?—Not by any means; I think that if I were in the agency of the county at this moment, and the facility for doing so were given me by the county gentlemen, I could at once create at least 200 votes; probably a great many more.

12083. *Mr. Edward Buller.*] I understand you to recommend that residence should be defined in counties as it is in boroughs?—Yes, I think it should.

12084. What is the present definition in boroughs in Scotland?—In boroughs, residence within seven miles is held to be residence within the bounds; but I do not think that provision should be extended to counties. I can see a reason for it in boroughs, which does not exist in counties; though I believe that, even in boroughs, it has not been attended with very good effects.

12085. *Mr. Robert Stewart.*] Are you not aware that the system of creating fictitious votes has also been extended to boroughs?—I am; and the provision as to residence within seven miles affords, I believe, the greatest facility for creating fictitious votes in boroughs.

12086. *Mr. Edward Buller.*] Then you strictly confine the residence to within the limits of the county?—Yes, I would confine it within the Parliamentary bounds of the county.

12087. By so doing, you exclude altogether the residents within the borough from the county franchise?—I do, unless they happen to have a residence in the county also.

12088. *Mr. Robert Stewart.*] That is to say, that a man who has property within the county, but happens to be domiciled within the borough, you would exclude from voting in that county?—I would, unless he had a separate residence in the county. For instance, it is quite common for a man to reside in the county during a great proportion of the year, and to reside in the burgh during the winter months; I see no reason for excluding such a man from a vote in the county, as I consider him truly a resident within it.

12089. *Mr. Edward Buller.*] Would you not exclude, by so doing, a considerable number of the county voters of Scotland who now reside within boroughs?—I do not think I should; and certainly, if the principle is not made retrospective, very few indeed could be excluded.

12090. Do you mean to say that the number of persons who reside in boroughs, having property in the county, is extremely small?—I think it is not great; but, at all events, the great mass of them are on the roll already, and will continue upon it, unless you make the law retrospective.

12091. Are you not aware that the inhabitants of a large town in counties are generally among the most intelligent of the constituency?—No doubt they are; but I think the county constituencies in Scotland are also very intelligent.

12092. Your reason, as I understand, for excluding the inhabitants of boroughs is, that there might be found a number who would swamp the county constituency?—My reason is, that that evil has been experienced to a very great extent indeed.

12093. *Mr. Hope Johnstone.*] That answer has reference chiefly to the case of Edinburgh; you would not apprehend that mischief to arise in most cases?—My experience is chiefly in the county of Edinburgh; but I apprehend the same evil will always arise in the neighbourhood of every large town, wherever the constituency of an adjoining county or counties is pretty equally balanced.

12094. *Mr. Edward Buller.*] But supposing residence enforced, within the Parliamentary bounds of the county, what, in your opinion, would be sufficient to constitute residence?—I think that the voter should either reside there personally, or have his dwelling-house, establishment or place of business there.

12095. How would you define his personal residence?—The definition of it, in any enactment to be passed, would require to be carefully considered; but I have already stated the principle which I think should be enforced, and I would only add, that I should be anxious not to carry it further than may be necessary to remedy the evils which have been found to exist.

12096. Supposing the law to require one of these three qualifications, residence, office of business or establishment, what facts should you require to constitute personal

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personal residence?—I think you should require the same description of facts as are at present required with regard to boroughs. A case of residence will generally be one of circumstances, and it must be left to the judge to decide, on the circumstances being brought before him, whether the party claiming is truly resident or not.

12097. In general, in boroughs, it rests on the fact of payment of rates and taxes?—A voter, if he is not a lodger, cannot be resident unless he pays rates and taxes; but the payment of rates and taxes will not, of itself, constitute residence. In order to prove that, you must go a good deal further.

12098. How would you draw the distinction between the man who has a *bond fide* country-house, and the man who merely kept a cottage, no matter how small, for the purpose of constituting himself a resident voter?—A party who bought a cottage, would require, in order to claim as a resident voter, to reside in his cottage, at all events for some considerable time during the course of the year; and, supposing it to be let, all foundation for a plea of residence would be instantly destroyed; he could, therefore, only maintain the appearance of being resident by leaving his cottage totally unproductive, and even then it would be difficult.

12099. But supposing he should be willing to make that sacrifice of expense, what is there to prevent him?—There is no doubt it would be possible for parties, determined to have votes, to comply with the condition of residence, and they would naturally do so with as little inconvenience to themselves as possible; but I do not apprehend that a system of collusive residence could be carried to such a height as to be very prejudicial.

12100. What is sufficient to turn that majority of nine or ten?—No doubt, if the majority were so small, and collusive residence were resorted to on one side only, the balance of parties might be easily turned; but, if a vote could only be acquired in the way you are now contemplating, I cannot suppose, either that it would be done to any great extent, or, if done at all, would be done by one party exclusively.

12101. Does it not appear to you to be perfectly clear that you are only, by enforcing residence, increasing the difficulty of creating votes?—I think you would be doing much more. You would be increasing the difficulty of swamping the local constituencies to such a degree, as to make it, in my opinion, absolutely impossible for the system of things which now exists to be longer carried on.

12102. In point of fact, it would only be a matter of expense; the constituency might be swamped as readily as it is now, excepting only the question of expense; it would be more expensive to do it?—It would be greatly more than a matter of expense; a party wishing to obtain a vote would require not only to buy that vote, but to comply with the statutory condition of residence, and, of course, any enactment that might be made would endeavour, as far as possible, to prevent a party getting on the roll as a resident voter who did not truly and *bond fide* possess that character. As to its causing parties, truly resident within the county, to obtain votes, I do not consider that to be an evil; on the contrary, the greater the number of parties, truly resident within the county, who obtain fair qualifications, I think the better.

12103. But where the constituency is extremely small, though you increase the difficulty and the expense of creating fictitious votes, that difficulty and expense applying equally to both parties, does it not appear to you that you still leave the power in the hands of the wealthier parties, the party most willing and most able to create these votes?—There can be no doubt, that, if you do away with the present system of creating fictitious qualifications, and prevent any man from getting on the roll who does not truly lay out the purchase-money of his qualification, those only will be enrolled who have a certain amount of money at command; but, if the parties who get on the roll be restricted to those who lay out the money, and really reside within the county, it is a matter of no importance, in my view, whether these be of one way of thinking or the other; I think you get a fair and proper constituency, which is the object the remedy I have suggested has in view.

12104. But what would be the great difference in the effect between the present system and that which you propose, when it is possible for the same parties to hold a qualification under the improved system, as they do now?—If the principle of residence were once introduced, I do not think it would be possible, in the general case, for parties to obtain qualifications in the manner they do now. It is very possible that in strongly contested counties it might be attempted to

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evade the provision of residence, just as at present the Reform Bill is attempted to be evaded in various other ways; but, of course, in introducing the principle of residence, you must provide, as far as possible, against its being evaded.

12105. Would it be possible to provide against the evasion of that principle?—I have no doubt it would.

12106. Now, with regard to residence, would it not be as easy for the inhabitants of one of these boroughs to take a small cottage near the borough, and to comply with any requisite of residence?—There is no law so perfect, that, in a few individual instances, it may not be evaded; but, my opinion is, that, if residence were introduced, it could never be evaded to such an extent as to be at all prejudicial. I have said that I do not think the fact of an individual, not resident within the limits of a county, obtaining a vote in it, is, in itself, an evil; but that I consider it to become an evil, when a number of political partisans combine together, and overwhelm the local constituencies.

12107. Would it not be extremely easy to comply with the requisites of personal residence?—No; if the proposed enactment was properly framed, I do not think it would be easy for a party, not fairly resident, to satisfy the court that he was entitled to be enrolled as a resident voter.

12108. What, in your opinion, would constitute personal residence?—By personal residence, I mean the dwelling personally within the county; I put it in opposition to the case of a party who has merely an establishment within the county, and may be there only occasionally.

12109. That he should regularly sleep there?—Simply, that that should be his usual place of residence.

12110. Requiring him actually to sleep on the premises the greater part of the year?—I take the words personal residence in their ordinary and common sense.

12111. Mr. *Walter Campbell*.] How do you obviate one point of your proposal, which is this: You are aware that many proprietors in Scotland have estates in different countries; they are very seldom resident in them, though they have mansion-houses of considerable size; how do you propose to allow such a person to attain to what he is entitled to, the right to give his vote to the person who is to represent his interests as member for that county?—I stated, at the outset of to-day's examination, that, as residence is proposed to be introduced solely to prevent the swamping of the local constituencies, I thought it might be proper to make an exception in favour of parties who had, really and *bonâ fide*, property within the county to the extent of 100*l.* a year. I think, if you had residence enforced in all cases but these, you would sufficiently obviate the existing evils.

12112. Mr. *E. Buller*.] Now will you tell me what you require to constitute an office?—I mean a place of business or chambers, in the *bonâ fide* occupation of the party claiming.

12113. By *bonâ fide* occupied, you mean at all times, at all usual office hours for the transaction of business?—Yes; I mean that the voter should make that use of them which he might be supposed to make, if the subject was really held by him for ordinary purposes, and not for the mere purpose of registration.

12114. Supposing he was to have an office in a large town or village, only upon market days; that is a very common practice with lawyers?—Certainly, if that was a common practice, and it was a *bonâ fide* case, I think it should constitute residence.

12115. Are you not aware that a very large proportion of those persons who are in possession of fictitious votes are writers to the signet?—I am.

12116. And would it not be extremely easy for them to establish offices at a very moderate expense, so as to constitute their residence according to your view of it?—No. I am quite satisfied, in my own mind, that the law would never be evaded in any such way.

12117. Then, with regard to an establishment, will you state what would be sufficient to constitute an establishment?—By establishment, I understand a residence, in which, though the party may not live during any part of the year, he maintains an establishment of servants.

12118. What number would you require to constitute an establishment?—These are cases of circumstances, and you must leave it to the judge to form his opinion, from the evidence, whether the case be a collusive or a fair one; I do not anticipate that there would be any practical difficulty in determining the fact.

12119. Supposing the party thought it worth his while to have either an office or an establishment for the sake of obtaining a vote; if it amounted to an office

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or an establishment, you could not call it a collusive transaction?—Certainly, if he fairly complied with the provisions of the statute, I should not call it a collusive transaction.

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12120. Would it not be extremely easy to have a small cottage and gardener to constitute an establishment?—It is possible that might be done in one or two instances, and I see no evil in it; I believe the evil to lie, not in one or two non-resident voters getting on the register, but, such a number of them, as may turn the majority of the county, even though that majority be considerable.

12121. *Mr. Hope Johnstone.*] Would that transaction be confined to one or two?—I think it never could go to any great extent.

12122. Why should it not go any great extent?—Because I think there would be infinite difficulty in getting any number of individuals to lay out the money, and subject themselves to the inconvenience which the hypothesis supposes.

12123. *Mr. Edward Buller.*] What is the inconvenience a person is subject to by having an office and establishment on the very smallest scale?—A man could not have his office without the Parliamentary bounds of the borough, even on a very small scale, unless he had his clerks and servants there, and to remove them from his usual place of business would be a very great inconvenience.

12124. *Mr. Hope Johnstone.*] I think you said you could conceive, in the case of an office, that attendance once a week would constitute residence?—Yes, provided always that was an ordinary practice, as I understood an honourable Member to state that, in some cases, it was.

12125. You have stated that you think the practice of keeping a cottage in the manner which has been pointed out would not go to any great extent?—I think it could not.

12126. Was it not the practice to pay very considerable sums of money for the acquisition, for bare superiority to give the right to vote in counties under the old system?—It was.

12127. There was no great difficulty found in discovering persons ready to make that sacrifice?—I believe there was not.

12128. Would there be a greater pecuniary sacrifice in effecting such an arrangement, in order to acquire the right of voting in that which has been pointed out than there was under the old system of acquiring the vote?—There might not be a greater sacrifice; most probably not so great; but, since the Reform Bill, although a vote is a desirable acquisition, and parties will make a sacrifice to obtain it, there are by no means the same inducements to obtain it as there were under the old system.

12129. Only in the case of the majority, when parties are very nicely balanced?—I think not, even in that case; for, under the old system, you had a comparatively small constituency, and therefore each individual vote came, in itself, to be a matter of very considerable importance, which the holder of it could turn to account in promoting the political interests of his family; but, since the Reform Bill, though you sometimes have as small majorities as you had under the old system, yet, the constituencies being larger, the value of an individual vote is considerably diminished.

12130. *Mr. George Hope.*] Did I understand you to say, in the small constituencies in Scotland you considered the sentiments of the great bulk of the voters to be perfectly well known?—Yes, I believe that, in some of the smaller counties, the agents on both sides can tell, almost to a man, how each individual will vote.

12131. Therefore surely the effect, where the majority is very small, would be very much the same, though the number of the constituency is larger than under the old system?—If you mean that an individual vote would be as valuable in a small county now as such a vote was under the old system, I should say decidedly not; because, though the value of a vote will always, to a certain extent, be increased or diminished, according as the majority increases or diminishes, yet the great value of a vote consists in its being held but by few parties.

12132. Do I understand you to say, that the value of a vote does not depend on its importance in carrying or not carrying the election?—There can be no doubt it depends very much upon that; but I will illustrate my meaning by a case. I believe there were counties in Scotland, before the Reform Bill, in which there were not above a dozen votes altogether; these votes were of course of infinite value in themselves, and much more valuable indeed than the same number of votes in any county under the present system, however small, and however nicely parties may be balanced; and just for this reason, that a candidate or a Government

John Clerk Brodie, Esq. might easily buy over 12 men, while it would be a difficult matter to buy over 100.

12133. I understand you to assume that in those small constituencies the great bulk of them were, as I may so express it, fixed in their political opinions, and consequently fixed in the mode of giving their votes?—I have been told that in the county of Selkirk, the agents can tell almost to a certainty how each man will vote.

12134. *Mr. Edward Buller.*] In point of fact, what you have stated amounts to this, that the value of the vote will materially depend on the number of the constituency?—Certainly.

12135. Then by insisting on residence, inasmuch as you will reduce the constituency, you will increase the value of each individual vote?—I should certainly in one way increase the value of the vote, because the vote would not be liable to be swamped by the introduction of parties non-resident.

12136. But that is not quite an answer to my question; the question is, whether by reducing the constituency you are not increasing the value of each vote?—I did not very clearly understand your question, and have given it the best answer in my power; but I shall be very happy to answer it again when put to me more intelligibly.

12137. Did you not before state that the vote where the constituency was only 12 was of immense value?—Yes.

12138. That the vote where a constituency was 300 was not of such value; did you not mean by that to say, that the value of an individual vote depended greatly on the size of the constituency?—I mean to say this, that whenever a constituency is very small indeed, each individual vote will be of considerable value; but that when you once get the length of a constituency of several hundreds, I do not think the introduction of more voters into the county will affect, so materially, the value of the votes.

12139. Do I understand you to say, that you conceive the value of a vote to be high where the number is only 12, or a very limited number, but when you get above a few hundreds, it is then immaterial whether the constituency consists of hundreds or thousands, as far as the value of the vote?—Comparatively speaking, I do. Of course I am speaking comparatively.

12140. You mean to say that a vote where the constituency is 300, is of no higher value than a vote where the constituency is 4,000?—I do not mean to say that; on the contrary, I think that in a small constituency a vote will always be somewhat more valuable than in a larger one; but the remark I made was, that whenever you have a very small constituency, amounting only to a dozen or 20, the votes will always be exceedingly valuable. Such a state of things existed under the old system, before the Reform Act; and I took that illustration, as showing the difference between that system and the system which exists now.

12141. You cannot doubt the fact, that a vote is of higher value in a small constituency than in a greater constituency?—It is so, if you suppose that the majority in the two counties is in the same ratio as the amount of their constituencies; but it will not hold good in every case.

12142. Will not the remedy which you propose of enforcing residence, be one which reduces the constituency?—There is no doubt it will confine the constituency within narrower limits than at present.

12143. Then each individual vote will be proportionably increased in value?—To a certain extent it will.

12144. Will not therefore individuals, after that change has been produced, be ready to make greater sacrifices to obtain that vote than they do at present?—Very possibly they may.

12145. And therefore might feel inclined to put themselves to that inconvenience and expense which the provisions which you recommend would require?—I have already said, that, if the law of residence is introduced, it cannot, in my opinion, be evaded, to any great extent.

12146. Cannot you conceive it extremely possible for a constituency to be so small and nearly divided as to make it worth while that a limited number of individuals should comply with those terms?—Yes; I can conceive it quite possible that a limited number of individuals would, in those circumstances, endeavour to comply with the provisions of the new law.

12147. Would both parties be equally inclined to do so?—Yes.

12148. The

12148. The party successful would be the party in possession of the greatest wealth and power?—Yes; if it was also the most numerous. *John Clerk Brodie, Esq.*

12149. Why should the most numerous party be more likely to comply with those regulations which require expense?—Both parties would endeavour to comply with them; but I am not certain it would be the party collectively the most wealthy, that would be most successful. In a large town you may have the greatest collective wealth on one side, but a greater number of individuals on the other, each of whom has sufficient wealth to enable him to adopt the course supposed. In such a case, I think the most numerous might defeat the more wealthy.

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12150. That is to say, where the most numerous have the greatest command over wealth and power?—No; there may be more collective wealth on one side than the other; but, it may be more widely distributed on that side where, in the aggregate, there is least of it.

12151. It amounts to this, that the one party who may be successful may not be designated as strictly the most wealthy, but may have the greatest command of wealth for a particular purpose?—Yes; may be able to turn a less amount of wealth to more account, for a particular purpose.

12152. *Mr. George Hope.*] You spoke of inconvenience as being a bar to the evasion of your proposed new law respecting residence, did you not?—I said I thought it could not be evaded, without so much inconvenience and expense that no practical evil was likely to arise.

12153. Is not the objection of inconvenience one which does already apply, and in process of time must apply with increased force, to transactions carried on under the present system?—I think it very possible that, at some distance of time, the parties who have engaged in creating fictitious qualifications may experience some evil results from them; but the system may go on a very long time indeed before it will operate its own remedy, by showing those who engage in it that it has involved them in difficulties they did not contemplate.

12154. Would not the circumstance of actions being brought upon the bills given in these transactions, and objections being taken to the title in conveyances of property subject to these life-rents, be inconveniences such as would tend to check the operation of the system?—I have had occasion to state that, from the way in which these transactions are managed, I think it would be very difficult indeed for either party to make out, in a court of law, that they were fair transactions. I do not, therefore, anticipate that the operation of the system is likely to be checked by actions being brought on them.

12155. Would not you, as a conveyancer, consider the appearance of a life-rent on any property offered to you for sale, whether of this description or not, as an objection to the title?—No enfeoffment passes on these life-rents, and therefore I could not know that they existed.

12156. I suppose a case in which you did know they existed?—If I knew of the existence of the life-rents, I should insist upon their being renounced before I paid the purchase-money; though it would not be necessary I should do so, because, the moment I put the enfeoffment of my client on record, all the life-rents would fall.

12157. Supposing, however, enfeoffment to have been previously taken on the life-rents, you would not be precluded from that course?—If enfeoffment was previously taken on the life-rents, I could only take the property subject to the burthen of them; and, if the bargain was I was to get the property clear, of course I should not complete the transaction till the life-rent enfeoffments were renounced.

12158. You stated that the difficulty to establish these transactions is, in your opinion, a reason why the inconvenience supposed would not result from them; is it not your opinion, as a lawyer, that the liability to have actions brought against you, and questions raised on your title, is of itself an extreme inconvenience?—If the life-renters are not enfeoffed, no lawyer, acting for a purchaser, could possibly expect any serious question, as none could arise.

12159. I allude, not merely to the case of the life-rents, but the case of the outstanding bills; do you not consider that the liability on an outstanding bill, under any circumstances, is an inconvenience?—There is no doubt it is possible that suits may arise on those bills at a distance of time; but I do not think they are likely to arise, because the bill is the consideration of a life-rent, into possession of which the obligant in the bill has never entered, and from

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which he has taken no benefit; and because, even supposing an action to be raised, the party raising it would require to give deduction of all the rents he had received, and to allow the other to draw them in all time coming.

12160. That is to say, he would be liable to an action, though he might have in part a good defence?—There is no limit to the bringing of actions; but I am talking of the prospect of success; and, in the circumstances of these life-rents, there would, in my opinion, be no chance of success, in 99 cases out of 100.

12161. Is not a bill of itself a *prima facie* case against the party who has accepted it?—Certainly.

12162. You spoke entirely of swamping local constituencies in counties; do you not assume that the principle in representation should be numbers, and not property, in the county?—Not by any means.

12163. In what way, then, do you distinguish between the property qualification and what you call the local constituencies?—I apprehend the principle of division of counties to be, that the local interests of each county shall be represented; and if you allow the voice of the local constituency to be drowned by the introduction of non-resident voters, I think the plain result is, to prevent the accomplishment of that object.

12164. Do you not consider that property is the principle of county representation?—Not entirely so; for I consider property to be only the test of the intelligence of the voter. I think it plain that property is not itself represented; otherwise, there would be no accounting for the fact that in the case of an unentailed proprietor, every acre of property is available, while, in the case of an entailed one, you can only have a single vote.

12165. Mr. Edward Buller.] On Wednesday you mentioned some remedies which you would suggest, in order to prevent the creation of fictitious votes, as far as joint tenancies were concerned; will you now tell us what remedies you would suggest to prevent the creation of fictitious votes by life-rent?—I would abolish all life-rents, except such as are required by marriage, inheritance, or office.

12166. Chairman.] Except such kind of life-rents as were known at the first registration of 1832?—Yes; I would retain all life-rents of the description usual in Scotland before the Reform Bill.

12167. Mr. Edward Buller.] Why would you recommend that?—For many reasons. First; because I have found from experience, that life-rent rights are particularly well adapted for collusive qualifications, and that matters may be so managed that it is practically impossible to prove the collusion, which unquestionably exists. Secondly; because, even if fair transactions, I think them very prejudicial to the interests of the country; and that, just for the same reason that I conceive entailed properties to be prejudicial,—any difference that exists being in favour of the entailed proprietor, who has not only something more than a life-rent, but is proprietor of an estate instead of a small fraction of land. Thirdly; because the investigation of these rights occasions by far the greater part of the expense in the Registration Courts, almost the whole time of the court being frequently taken up with their investigation. Fourthly; because they are rights not so much as known in ordinary business, and only introduced for political purposes subsequent to the Reform Act; and consequently, the abolition of them would not prevent a single man, out of the natural constituency, getting upon the roll. Lastly; because, while the evils I have now mentioned arise from the existence of these rights, I cannot see that their abolition would be productive of a single bad consequence; certainly it would not prevent any one from getting on the roll who is really willing to acquire a fair qualification, as every mode of acquiring property, known before the Reform Act, would still be open.

12168. But supposing we were to abolish these life-rents, what should prevent parties having recourse to the creation of fictitious votes by means of joint proprietorships?—Fictitious votes have seldom been created upon joint properties, except in so far as parties have acquired them burthened with debt; that is another evil which any remedial statute should have specially in view.

12169. You are aware that we have evidence before this Committee of the creation of joint proprietorships for the purpose of creating votes; the reason why recourse has not been had to that system, instead of creating life-rents, is simply because the creation of life-rents is easier?—Certainly; I have no doubt of it.

12170. And if you get rid of the creation of votes by life-rent, you would of course then increase the tendency to create votes by joint proprietorships?—I am confident

confident you would; and I see no other remedy but the introduction of enfeoffment, which I think would be an effectual check.

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12171. Explain why it should?—To do that, I must call the attention of the Committee to the way in which life-rents are constituted at present; a life-rent disposition is granted, and a bill given for the price, as to the exact time of payment of which nothing is said, while there is an indefinite understanding that it is to be allowed to lie over; the disposition is nominally delivered to the life-renter, but immediately given over to the granter's agent, and the factor for the granter continues to collect the rents just as he had done before the life-rent was constituted. Now, take the case of joint proprietorships; unless enfeoffment is made necessary I see no reason why the same system should not be carried on in joint proprietorships which has hitherto been adopted with life-rents, but, if it be required that a joint proprietor shall be enfeoffed, I think the system which now exists as to life-rents could never be carried on in joint proprietorships.

12172. If enfeoffment is required?—Not, if enfeoffment is required; otherwise I think it would.

12173. Therefore, in the abolition of life-rent votes, you would couple, as essential, enfeoffment?—Yes.

12174. In fact, all voting on property?—Yes. Except that I would not carry the remedy further than the evil renders it necessary; I would not consider enfeoffment necessary in the case of a party acquiring property by succession, marriage, or deed of settlement.

12175. But in all cases of purchase or conveyance you would require enfeoffment?—I would.

12176. Would you not also require in all cases that the heritable burthens should be deducted from the value in estimating the right?—Certainly, I would.

12177. Then do you not perceive that the effect of all these remedies you have proposed, whether it is with regard to joint life-rents, or whether it is with regard to joint proprietorships, that all the remedies you suggest are limitations of constituency?—I do not think they are limitations of the fair constituency of the county. They are limitations as regards the collusive and fictitious voter, but I do not think that, they are so, in the general case, as to the fair constituency. It may be said of enfeoffment, that, being a process which costs expense, it will prevent some of the poorer villagers from getting upon the roll, and most certainly I consider this to be an objection which should be maturely weighed; at the same time I believe it is in contemplation materially to diminish the expense of enfeoffment, in which case the force of the objection would not be so great.

12178. But setting aside that distinction which you draw between the fair and the unfair parts of the constituency, is it not the fact that these remedies which you suggest would reduce the numbers?—No doubt of it.

12179. Though you increase the difficulty of maintaining a vote, do you not perceive at the same time you are increasing the value of the vote?—Very probably I may.

12180. And do you not think that, under those circumstances, it will be as probable and as possible that persons will acquire the qualification for the sole purpose of voting, as they do now?—I think that, if the remedies I propose are adopted, it will be next to impossible for individuals to acquire collusive and fictitious qualifications, and it is this description of qualification which, in my opinion, is objectionable; if the effect of doing away with fictitious qualifications be, as it probably may, to encourage the acquisition of *bond fide* qualifications, I should consider that, not an evil, but a benefit, provided the persons acquiring them were resident within the county.

12181. After these remedies which you suggest have been applied, would it not be easy for any owner of unentailed property to convey a right of voting to a dependent, granting enfeoffment, taking from him payment of the purchase by bill, and receive again a back lease to enable him to draw the rents and profits of the estate, and in this way place on the roll a voter as objectionable as any that at present exists?—The introduction of enfeoffment would operate, in a great measure, as a bar to a transaction of this kind, because the party granter of the right would have no hold over the land in competition with the creditors of the party receiver. Besides, the question proceeds on the supposition that, if the seller

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takes a bill for the purchase-money, that is to be held as legal payment. I am inclined to be of opinion this should be altered, and that in such a case the amount of the bill should be deducted from the value of the subject.

12182. In fact you would alter the law, so as to make the payment by bill no longer considered as a cash payment?—I think I would.

12183. *Mr. George Hope.*] You say you would prevent the bill being accepted in payment; have you considered at all the possibility of the party borrowing money from other quarters, and actually paying in money?—If the claimant is in such credit that he can borrow money from a third party without burthening the property he has acquired, the presumption is, he is in such circumstances as to be able to pay the money without difficulty, and I would therefore not propose to bar his registration.

12184. In cases in which, as you have described these to be, complete confidence exists, would it be easier to trace out the transaction, supposing the money to have been lent from some party interested in the transaction, than it is to fix parties with the real nature of the transaction as they are now conducted?—I think it highly probable that parties might endeavour to resort to a plan by which the money should be paid to the grantor in cash, though it did not actually come out of the pocket of the receiver of the right; but I do not think this could be carried on to any very great extent, if you had the two remedies of enfeoffment and deduction of burthens; and, in addition to these, the judicial examination, which would give you much greater facilities for arriving at the truth, than are at present possessed.

12185. Suppose a case such as this: that A. having put in a claim to be registered, and the transaction being inquired into, it appears that he has paid in cash for his proposed qualification; that A., on being examined, owns that the money has been lent to him on his bill by some third party not connected with the property he has purchased, or in any way concerned in the purchase; that, in short, he simply owns that the money has been lent to him for the purpose of possessing himself of a vote; would you exclude the man in such a case from being put on the roll?—I do not think I could; in such a case, the presumption would be that it was a fair transaction, and that the party must be a man of some credit, the money being obtained on his personal obligation.

12186. *Chairman.*] But if the man got an absolute conveyance of the property, and is a *bond fide* proprietor, can you keep him off the roll on the question that he has procured the money?—Certainly not, supposing it to be a fair transaction.

12187. *Mr. George Hope.*] In cases in which the constituencies are small, and the majority small also, do you not conceive that very nice examinations might not be gone into as to the credit of the parties to whom these sums were lent?—Yes; if you entered into a minute inquiry as to how the money was obtained, great inconvenience might arise from it in individual cases.

12188. Supposing the constituency, by the operation of your proposed enactments or otherwise, to be reduced very much in amount, do you not conceive that a practice might arise, instead of creating votes, of buying out and extinguishing old ones?—I think that, wherever parties are very equally balanced, you will always find them resorting to means by which the majority may be turned in their own favour. The object I have in view is to prevent them, in any case, from resorting to means which may operate the substitution of a fictitious, for a *bond fide* constituency.

12189. *Chairman.*] There are some defects in the Registration Courts; will you tell us how you would correct them?—My plan would be a very simple one. I would leave the court of original jurisdiction exactly as it is at present, allowing the sheriff to judge both of fact and law; but I would oblige him to make a finding on every point of fact which either party should think material, and to take a short note of these findings for the Court of Review. I would make his judgment on the facts a final judgment, but allow an appeal on points of law, to a single judge of the Supreme Court who should be appointed for life, with a reasonable salary, and hold a fixed court in Edinburgh.

12190. I think you stated, in answer to a question in your previous examination, that you passed as writer to the signet not very long since?—Yes.

12191. The reasons you have suggested to us, are they entirely the result of your own opinions and observations, or have you proposed them after having communications or consulted on the subject with other persons who have been experienced

experienced both as writers to the signet and electioneering agents?—I have consulted with many such persons on the subject. The general opinion, I know, is, that there is no remedy whatever for the swamping of the local constituencies but residence; and the remedies which I have suggested against the creation of collusive and improper votes are remedies which have occurred not only to myself, but to most of the lawyers with whom I have conversed on the subject.

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12192. It is a question to which lawyers have been in the habit of turning a good deal of their attention of late years?—It is.

12193. And there have been a good many communications and consultations held on the subject?—There have.

12194. And what you state is the result of the opinion you have gathered from them?—It is, and of my own personal conviction.

12195. Mr. George Hope.] Did I understand you to say that meetings were held on this subject?—Yes.

12196. Whose opinions did you refer to when you answered that the results of the opinions were so and so?—I referred to the opinions of the various parties with whom from time to time I have had communication; but, besides these private communications, we have at times met in a body to consider the subject together.

12197. It is with reference to that body; by whom, or of whom, did that body consist?—It consisted principally of advocates and writers to the signet.

12198. Of course of your own view of politics?—Yes.

12199. I believe the inconvenience of these votes is generally admitted by all parties?—It is.

12200. There was one question I forgot to ask with respect to the life-rents; why would you not consider enfeoffments in cases of life-rents to be a security?—For this reason, that the two rights are totally different; enfeoffment in a life-rent can only pass in favour of the life-renter, and when he is once enfeoffed no second enfeoffment is competent; when he conveys his life-rent he does so by simple assignation, which may be latent in the hands of the receiver, in whose favour no enfeoffment can pass. A re-conveyance of absolute property again can only be completed by enfeoffment, and, so long as the enfeoffment remains untaken, the right of the receiver is insecure. In the case of a life-rent, therefore, the granter may secure himself by a latent deed without enfeoffment; but in the transfer of property no such security can be obtained, except by enfeoffment on a re-conveyance, which would publish the transaction to the world; but, what is still more important is this, that a life-rent enfeoffment falls, *ipso facto*, by the death of the life-renter, and the granter can never be involved in questions with his representatives; but, in the case of property, it is different; the death of the party does not destroy the right, it only transmits it to other hands; and, supposing the deceased to have been enfeoffed, the granter, besides being involved in considerable expense, would run the risk of very troublesome questions arising with his representatives.

[The Witness then delivered in Tables relating to the Mid-Lothian constituency.]

Appendix, No. 1.
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Jovis, 22^a die Februarii, 1838.

MEMBERS PRESENT.

The Lord Advocate.
Mr. George Hope.
Mr. Hope Johnstone.

Mr. Divett.
Mr. Baring.
Mr. Edward Buller.

MR. HORSMAN, IN THE CHAIR.

John Hope, Esq. called in; and Examined.

12201. Chairman.] YOU are a writer to the signet in Edinburgh?—I am.

John Hope, Esq.

12202. And you have acted as agent in the Registration Courts in the county of Linlithgow?—I had a great deal to do with the matter.

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12203. You

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12203. You have taken the political charge of the registration, have you not for that county?—Yes, latterly I have had the most of the charge.

12204. Has the practice of creating votes, by means of life-rent qualifications, been carried to any great extent in that county?—There have been life-rent votes made in Linlithgow.

12205. Do you know an instance of a number of life-rents being made on the farm of Kingsfield?—Yes.

12206. Were you the agent in that transaction?—Yes.

12207. You acted for both parties?—I did not act for both parties; some saw the draft of the deeds; I always wrote the draft of the deeds.

12208. Will you tell us the nature of the transaction; was it a conveyance of the farm in life-rent?—A conveyance of the farm in life-rent to certain parties for a price paid down in money, and that gives them a vote under the Reform Bill.

12209. How many persons were inrolled on it?—Ten.

12210. What was about the rent that was paid?—To qualify ten persons that required 105*l.*; there were public burthens and other deductions.

12211. What was the rent that was paid for the farm of Kingsfield previous to its being conveyed to these life-renters?—It was a grain rent; I do not recollect the exact rent; I was going on to bring out what really the rent must have been about; it must have been most abundantly adequate, and still not prodigal for the number of voters put on the roll; there was no fictitious value, if that is the object of the Chairman's question.

12212. What was the name of the tenant who was in possession of the farm?—There were joint tenants, of the name of Harvey.

12213. And they had the farm on a lease?—Yes, some years of which had not expired.

12214. Do you remember how many?—It was a short period, not expired, about three or four years.

12215. Did they make the resignation of this lease previous to this conveyance?—They did; they renounced that lease, so as to put the land out of lease.

12216. Then, upon their renouncing that land, Lord Hopetoun made over the conveyance to these ten proprietors on life-rent of that farm?—Lord Hopetoun's commissioners did so.

12217. Then did he receive back a lease of the farm from the persons to whom he gave over the life-rents?—Lord Hopetoun's commissioners acquired for behoof of Lord Hopetoun the lease of the farm.

12218. From the life-renters?—Yes.

12219. A life-rent lease?—It was a lease to last during the life of the longest liver of the life-renters.

12220. Then are these tenants, Harvey, still in possession of the farm?—At this present moment they are.

12221. Those tenants are still in possession of the farm?—Yes.

12222. Were they ever out of occupation of it at all?—They never were.

12223. Then though they renounced the lease, their possession was never disturbed?—Their right as tenant was disturbed, their character of tenant; but they actually did live in the house.

12224. And have done so ever since?—Yes; they never left the place, but their character of tenant terminated.

12225. Had they any renewal of the lease subsequently to the conveyance of the life-renters?—They had.

12226. For what term?—The remainder of the old lease.

12227. In fact, though the character of tenant as you state terminated, it was again renewed, and they sit in that character in the farm?—They now sit as sub-tenants.

12228. Who is the tenant over King's-field?—I mentioned that Lord Hopetoun's commissioners acquired this subject to Lord Hopetoun as a tenant, and therefore the Harveys held under him as sub-tenants.

12229. And they sit as sub-tenants for the remainder of the time for which the original lease has to run?—Yes; and they have a regular sub-tack for so doing.

12230. Did you state that you did not know what was about the rent of the farm?—

farm?—I would wish to state accurately pounds, shillings and pence; but I stated, that I consider it not safe to qualify more than the ten life-renters.

12231. That it was barely for 100*l.* a year?—Ample.

12232. That you considered it enough to qualify ten, but you did not think sufficient to qualify more?—I believe it might, I did not know what my proof of burdens might have been, and I thought it fair not to risk too much. There are various questions of right, and teinds and other deductions, which it is necessary always to take into consideration.

12233. I understood you that the rent was 100*l.* a year?—I should say it is nearer 150*l.* than 100*l.*

12234. Will you state what was about the value of the farm as well as you can, the rent of it?—I suppose about 150*l.* was the old rent, and the new sub-rent.

12235. Now the life-renters, you state, gave a tack to Lord Hopetoun?—They did.

12236. Do you know what rent he paid them by that tack?—By that tack Lord Hopetoun is bound to pay to each of the life-renters ten guineas a year; and also Lord Hopetoun is bound to pay all public and parochial burdens of every description. In short, it is to be clearly ten guineas a year certain to those proprietors of the subject.

12237. Lord Hopetoun pays 105*l.* altogether, and the public, parish, and other burdens?—Yes; which I conceived, in my view of the matter, was to exhaust the value of the subject entirely.

12238. In this case did you draw all the deeds that passed between the life-renters and Lord Hopetoun?—I did; at least they were drawn in my father's office.

12239. And did you act as agent for both parties in the transaction?—How do you mean agent for both parties? I did not pay the money for the opposite parties; the deeds were delivered to the agent of the parties. The parties knew the nature of the transaction; some of them may have seen the draft of the deed, and some may not; the great majority did not. There was some persons who did see the draft, but I cannot say whether it was appertaining to this subject or not. Therefore, perhaps the correct answer to your question is, I drew the deeds; but I did not act as agent to both parties.

12240. Who acted as agent for the other?—The deeds were delivered to Messrs. Monypenny & Dalgleish, writers to the signet, the regularly appointed agents of these parties, by special letter previously written to them by these parties.

12241. Were any of these life-renters resident in the county of Linlithgow?—I do not remember the names, but I should say none.

12242. Was there a similar transaction to this regarding the farm of Burnshot?—There was.

12243. How many life-renters were inrolled on that?—Nineteen; there was a person acquired a life-rent and died, but the vacancy has been filled up since.

12244. There are now 20 life-renters inrolled on the farm of Burnshot?—Yes.

12245. Was that transaction similar, in all respects, to the one you have just described to us?—Precisely.

12246. What was the rent of the farm of Burnshot?—I think it is between 250*l.* and 300*l.*; it is a grain rent, and therefore varies, and the fiars applicable to that year were low.

12247. Was your reason for putting 20 life-renters on that farm because the value of the farm was but sufficient to qualify that number?—I conceive it would have qualified more than that number.

12248. Many more?—Perhaps five or ten more.

12249. Do you know what rent Lord Hopetoun pays to the life-renters of that farm?—Ten guineas to each of them, and all the public and parochial burthens in the same way as the other.

12250. Are these persons like the others which you have mentioned also unconnected with the county of Linlithgow?—None of them, that I remember, reside in the county; I do not say they are unconnected with the county.

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12251. I want to know generally, are the persons whom you have described to us as life-renters under this conveyance, are they generally persons who have any connexion with Linlithgow except what they have acquired by these qualifications?—In applying to individuals I studied, as much as possible, to obtain the consent of persons connected with the county.

12252. Can you state one person in the 30 that you have mentioned who is resident in the county of Linlithgow?—I have mentioned that none reside there.

12253. Without going into detail, I believe conveyances of this kind of life-rent have been also made by other proprietors in the county?—There have been other landed proprietors who have made some.

12254. And the system is one that has been carried to some considerable extent?—I would not call it a system, nor do I think it can be carried to any great extent.

12255. But besides the cases we have learnt from you to-day, it has been carried to a greater extent?—Not much; you have got the most.

12256. The constituency of the county of Linlithgow has increased very considerably since the first registration of 1832?—It has not; the registration in 1832 was 600; I never counted 1836, but I think I checked your speech in which you stated it was 725; I have not gone over the states with reference to 1837, because I have not had time, and my chief observation would apply to 1836, but I do not think there is an increase on the year 1837, above 10 votes; that is my estimate of it.

12257. Will you tell me what was the amount of the registration in 1832?—Six hundred persons were registered.

12258. Do you speak from memory?—I can state that to be the fact, because I remember the thing well; I recollect every thing perfectly as to 1832; 600 was the amount in the certified register, which we received from the sheriff clerk.

12259. What is the amount of the register at this moment?—That is what I cannot tell you; I think you stated it was 725 in the House of Commons last year, and I checked your statement sufficiently to enable me to say that I think you are accurate as to that year; in the year 1837 I think the constituency has increased about 10 votes.

12260. Did you not know what your examination was to be about to-day?—I did, but I had no notion you were going to call me up till I got the notice last Wednesday.

12261. Have you got no papers by which you can tell us the amount of the registration in any of those years?—I could.

12262. With you in London?—Yes.

12263. Mr. *George Hope*.] With respect to the making of these life-rent votes, has it been the practice on both sides in your county?—The opposite side have not made joint life-rents, but they have made votes in other ways.

12264. What ways have they adopted?—They have made single owners; they began making joint owners; they have made some single life-renters, but they have not actually made joint life-renters.

12265. Was the money in all these cases of Kingsfield and Burnshot actually paid?—Lord Hopetoun's commissioners have received every farthing of the price of the sales of any portion of his estate to life-renters.

12266. You stated that you did not think the practice was likely to be carried much further; have you any particular reason for thinking that it will not?—I think there is great difficulty in getting people to take the votes, and I think the people are tired of it.

12267. Have you had any reason to know, from your experience, that they will not?—I know that in the year 1836 I easily found persons willing to make these purchases; but in the year 1837 I went about for nearly two months, and had the greatest difficulty to get the number I wanted.

12268. How many was that?—I believe 17. In the year 1838 I only wished two persons, and I exerted myself as much as possible, and could only obtain one; and I had to fill up the other qualification with my own name, having reserved myself for such a contingency.

12269. Therefore,

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12269. Therefore, in your opinion, this is not a practice that is likely to be carried much further?—I cannot succeed in it.

12270. *Chairman.*] You say that you yourself went about to these persons to get votes?—Yes, to become life-rent proprietors of this land.

12271. Now, in the case of the 30 persons which you have mentioned, were they applied to to take these votes?—Yes.

12272. And it was in consequence of that application that they did?—It was.

12273. *Mr. Divett.*] Does that indisposition to take votes arise from the creation, hitherto made, having quite answered its purpose, or from the increased indisposition to meddle with these matters?—It arises from the parties, who are likely to take such votes, having spent as much money as they are inclined in such transactions as these; that is what I conceive to be the barrier.

12274. Is it that the conservative interest has been made so strong in the county that there is no occasion to create any more?—That is not the reason; for I wished to fill up these places, and I could not get it done.

12275. You say you wished to fill them up; that does not answer my question; what I asked was, whether the indisposition to take these votes arose from the knowledge that the conservative interest was strong enough, without creating any more votes?—My impression would be, that to the various parties to whom I applied, the answer I got was that they had other votes; the feeling was that they had gone as far as they were inclined, and I always required money.

12276. You found a feeling among the parties that they had laid out sufficient sums already in that description of investment?—Yes.

12277. *Chairman.*] You say you always required money; did you tell these parties, when you applied to them, you always required money?—Yes.

12278. Are you not aware that there are many ways in which those persons could make an arrangement to pay that money, without in reality making any pecuniary investment whatever?—No; I think the money must be paid, one way or another; I do not understand how you can pay money and not pay it.

12279. The money was always paid to you for these life-rents by Mr. Monypenny?—No, not by Mr. Monypenny, by the persons themselves.

12280. To you?—To the clerks we sent round to receive the money; then the deed was delivered to Mr. Monypenny.

12281. You received it from the parties themselves, not from their agent?—Their agent was to receive the delivery of the deed.

12282. How came their agent not to pay their money for them, if he acted as agent for all the life-renters, as well as receive the deed?—Because he was not appointed to pay the money; he was only appointed to receive the delivery of the deeds.

12283. That is a form necessary to be proved before the Registration Court?—It is not a form, it is a point of law.

12284. Do I understand he acted as agent in any thing else but the delivery of the deeds?—There was nothing else required; they paid the money themselves, and he received the delivery of the deed; and there were one or two persons, not many, who may have seen the drafts; the rest took my statement; every body saw the principal deed itself, and there was no room for any further agency.

12285. To whom are the rents paid?—To the parties themselves, to each of them.

12286. Mr. Monypenny does not act for them in any way?—He does not receive the rents, they draw the rents themselves.

12287. *Mr. Divett.*] In this case rent actually passes every year?—Yes.

12288. And you had not been engaged in the creation of life-rents in cases, unless money *bond fide* passed between the parties?—I have not been engaged in making any of these, except every maker of these joint life-rent votes has received the cash, so far as I know.

12289. In all the transactions which you managed?—Yes.

12290. *Chairman.*] Who acts as agent for the property now of Kingsfield?—How do you mean, as agent; as agent for whom.

12291. For the proprietors?—The subject is let; they draw the rent themselves, they attend to their own business; there is nothing to be done; if they did not pay the rent they would take care to get it in some way or other.

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12293. From you?—Yes.

12294. Who receives the rent from the Harveys?—Lord Hopetoun's factor in the country; Lord Hopetoun is principal tenant, and he receives the rent from the sub-tenants.

12295. Mr. *Divett*.] Are the sums paid for those life-rents in proportion to the lives of the different parties?—Yes.

12296. What was about the average sum?—It varies in age; the sum I paid for mine was about 180 *l.* or 190 *l.*; none exceed 200 *l.*

12297. What may be the lowest, do you suppose?—It depends on the age of the individual; 60 years of age pays about 100 *l.*, then it diminishes in an increasing ratio as you go down.

A P P E N D I X.

Appendix, No. 1.

MID-LOTHIAN TABLES.

(No. 1.)

GENERAL TABLES, showing the aggregate Numbers of PROPRIETORS and JOINT PROPRIETORS, LIFE-RENTERS and JOINT LIFE-RENTERS, TENANTS and JOINT TENANTS, enrolled in *Mid-Lothian* in the Years 1832, 1833, 1834, 1835, 1836 and 1837, and the aggregate Numbers thereof standing on the Register in 1838.

1. CONSTITUENCY admitted in 1832, after the passing of the REFORM BILL.		Life-renters - - - - - 36	
Proprietors - - - - -	473	Whereof joint life-renters - - - - -	8
Whereof joint proprietors - - - - -	19	TOTAL Addition to Constituency in 1835 - - - - -	
Tenants - - - - -	610		242
Whereof joint tenants - - - - -	50		
Life-renters - - - - -	43	5. ADDITION to the CONSTITUENCY in 1836.	
Whereof joint life-renters - - - - -	-	Proprietors - - - - -	164
Voters transferred from old roll of free-holders - - - - -	168	Whereof joint proprietors - - - - -	98
TOTAL Constituency admitted in 1832 - - - - -	1,294	Tenants - - - - -	85
		Whereof joint tenants - - - - -	23
		Life-renters - - - - -	59
		Whereof joint life-renters - - - - -	24
		TOTAL Addition to Constituency in 1836 - - - - -	
			308
		6. ADDITION to the CONSTITUENCY in 1837.	
		Proprietors - - - - -	132
		Whereof joint proprietors - - - - -	83
		Tenants - - - - -	74
		Whereof joint tenants - - - - -	21
		Life-renters - - - - -	85
		Whereof joint life-renters - - - - -	75
		TOTAL Addition to Constituency in 1837 - - - - -	
			291
		7. CONSTITUENCY of MID-LOTHIAN in 1838.	
		Proprietors - - - - -	778
		Whereof joint proprietors - - - - -	239
		Tenants - - - - -	718
		Whereof joint tenants - - - - -	115
		Life-renters - - - - -	235
		Whereof joint life-renters - - - - -	114
		Voters transferred from old roll of free-holders - - - - -	129
		TOTAL Constituency on the Roll in February 1838 - - - - -	
			1,860
2. ADDITION to the CONSTITUENCY in 1833.			
Proprietors - - - - -	61		
Whereof joint proprietors - - - - -	20		
Tenants - - - - -	58		
Whereof joint tenants - - - - -	8		
Life-renters - - - - -	14		
Whereof joint life-renters - - - - -	2		
TOTAL Addition to Constituency in 1833 - - - - -			
	133		
3. ADDITION to the CONSTITUENCY in 1834.			
Proprietors - - - - -	38		
Whereof joint proprietors - - - - -	7		
Tenants - - - - -	37		
Whereof joint tenants - - - - -	15		
Life-renters - - - - -	13		
Whereof joint life-renters - - - - -	5		
TOTAL Addition to Constituency in 1834 - - - - -			
	88		
4. ADDITION to the CONSTITUENCY in 1835.			
Proprietors - - - - -	96		
Whereof joint proprietors - - - - -	29		
Tenants - - - - -	110		
Whereof joint tenants - - - - -	18		

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MID-LOTHIAN TABLES—continued.

(No. 2.)

TABLES, showing the Nature and Description of the LIFE-RENT QUALIFICATIONS on which Parties were enrolled in *Mid-Lothian* in the Years 1832, 1833, 1834, 1835, 1836 and 1837; and the Nature of the QUALIFICATIONS of the LIFE-RENTERS standing on the Register in 1838.

1. LIFE-RENTERS admitted in 1832.		5. ADDITIONAL LIFE-RENTERS admitted in 1836.	
(1.) Established ministers - - -	16	(1.) Established minister - - -	1
(2.) Schoolmasters - - -	10	(2.) Schoolmasters - - -	2
(3.) Dissentin ministers - - -	7	(3.) Dissenting minister - - -	1
Total <i>ex officio</i> Life-renters	33	Total <i>ex officio</i> Life-renters	4
(4.) Life-renters by marriage, succession, or <i>mortis causâ</i> settlement - - -	9	(4.) Life-renters by marriage and succession - - -	3
(5.) Life-renter by reservation, having originally been absolute proprietor, and sold off the fee - - -	1	(5.) Life-renters by grant - - -	52
TOTAL Life-renters enrolled in 1832, as per Tables, No. 1 - }	43	Whereof joint life-renters - - -	24
2. ADDITIONAL LIFE-RENTERS admitted in 1833.		TOTAL additional Life-renters admitted in 1836, as per Tables, No. 1 - - - }	59
(1.) Established ministers - - -	4	6. ADDITIONAL LIFE-RENTERS admitted in 1837.	
(2.) Schoolmasters - - -	4	(1.) Established minister - - -	1
(3.) Dissenting ministers - - -	1	(2.) Schoolmaster - - -	1
Total <i>ex officio</i> Life-renters	9	Total <i>ex officio</i> Life-renters	2
(4.) Life-renter by marriage or succession	1	(3.) Life-renter by reservation, having originally been absolute proprietor, and disposed to himself and others in joint life-rent, and to himself in fee - - -	1
(5.) Life-renters by grant - - -	4	(4.) Life-renters by grant - - -	82
Whereof joint life-renters - - -	2	Whereof joint life-renters - - -	75
TOTAL additional Life-renters admitted in 1833, as per Tables, No. 1 - - - }	14	TOTAL additional Life-renters admitted in 1837, as per Tables, No. 1 - - - }	85
3. ADDITIONAL LIFE-RENTERS admitted in 1834.		7. LIFE-RENTERS standing on the REGISTER in 1838.	
(1.) Established minister - - -	1	(1.) Established ministers - - -	20
(2.) Schoolmasters - - -	3	(2.) Schoolmasters - - -	22
(3.) Dissenting ministers - - -	2	(3.) Dissenting ministers - - -	13
Total <i>ex officio</i> Life-renters	6	Total <i>ex officio</i> Life-renters	55
(4.) Life-renter by succession - - -	1	(4.) Life-renters by marriage, succession or <i>mortis causâ</i> settlement - - -	15
(5.) Life-renters by grant - - -	6	(5.) Life-renters by reservation - - -	3
Whereof joint life-renters - - -	5	(6.) Life-renters by grant - - -	162
TOTAL additional Life-renters admitted in 1834, as per Tables, No. 1 - - - }	13	Whereof joint life-renters - - -	114
4. ADDITIONAL LIFE-RENTERS admitted in 1835.		TOTAL Life-renters standing on the Register in February 1838, as per Tables, No. 1 - }	235
(1.) Established ministers - - -	4		
(2.) Schoolmasters - - -	4		
(3.) Dissenting ministers - - -	3		
Total <i>ex officio</i> Life-renters	11		
(4.) Life-renters by marriage or succession	5		
(5.) Life-renter by reservation, having originally been absolute proprietor, and disposed of the fee, reserving his life-rent - - -	1		
(6.) Life-renters by grant - - -	19		
Whereof joint life-renters - - -	8		
TOTAL additional Life-renters admitted in 1835, as per Tables, No. 1 - - - }	36		

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MID-LOTHIAN TABLES—continued.

(No. 3.)

SPECIAL TABLE, showing the whole Number of SINGLE LIFE-RENTS and of JOINT LIFE-RENTS enrolled in the County of *Mid-Lothian* in each of the Years 1832, 1833, 1834, 1835, 1836 and 1837, with the Names and Descriptions and Places of Residence of the Granters and Holders of such Life-rents, and the Nature of the Rights constituting the same.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
1. LIFE-RENTERS admitted in 1832, 43.						
1.	Rev. James Grant, minister, South Leith.	office	patron	-	1	
2.	David Anderson, Edinburgh	marriage	-	-	1	
3.	Peter Hunter, Croftangry, Edinburgh.	succession	-	1	-	
4.	George Brown, schoolmaster, Duddingston.	office	heritors	-	1	
5.	Rev. John Thomson, minister, Duddingston.	ditto	patron	-	1	
6.	George Mitchell, grocer, Liberton	marriage	-	-	-	
7.	John Ritchie, teacher, Edinburgh	ditto	-	1	-	
8.	Rev. Dr. Scott, minister, Corstorphine.	office	patron	-	1	
9.	Alexander Simpson, schoolmaster, Corstorphine.	ditto	heritors	-	-	
10.	Rev. Mr. Torrance, minister, Glen-corse.	ditto	patron	-	1	
11.	John Hall, Whinnyhaugh	marriage	-	-	1	
12.	Rev. David Duncan, minister, Howgate.	office	-	1	-	
13.	Rev. Mr. Moncreiff, minister, Penicuik.	ditto	patron	-	1	
14.	Thomas Muir, schoolmaster, Penicuik.	ditto	heritors	-	1	
15.	Robert J. Cumming, M.D.	marriage	-	-	-	
16.	Thomas Corbet, forester, Dalkeith	ditto	-	-	1	
17.	David Noble, baker, Dalkeith	ditto	-	1	-	
18.	Peter Steel, schoolmaster, Dalkeith	office	-	-	-	
19.	Rev. Thomas Wright, minister, Borthwick.	ditto	patron	-	1	
20.	Rev. J. K. Cunningham, minister, Crichton.	ditto	ditto	-	1	
21.	David Davidson, nailer, Pathhead	reservation	-	1	-	
22.	Rev. Alexander Welsh, minister, Cranston.	office	patron	-	-	
23.	Rev. John Thomson, minister, Newbattle.	ditto	ditto	-	1	
24.	Thomas Noble, schoolmaster, ditto	ditto	heritors	-	-	
25.	Rev. Patrick Comine, minister, Bridgend.	ditto	-	1	-	
26.	Rev. John Paton, minister, Lasswade	ditto	patron	-	1	
27.	James Muir, schoolmaster, ditto	ditto	heritors	-	1	
28.	Rev. Mr. Hume, minister, Heriot	ditto	patron	-	-	
29.	Rev. John Watson, minister, Pinkieburn.	ditto	-	1	-	
30.	Rev. Mr. Muir, minister, Carrington	ditto	patron	-	-	
31.	John Mitchell, schoolmaster, ditto	ditto	heritors	-	1	
32.	Rev. James Goldie, minister, Temple	ditto	patron	-	1	
33.	Rev. George Sandy, minister, Gorebridge.	ditto	-	1	-	
34.	Rev. Mr. Sheriff, minister, Fala	ditto	patron	-	1	
35.	Walter Scott, schoolmaster, Cockpen.	ditto	heritors	-	1	
36.	John Webster, Quarryhead	marriage	-	-	-	
37.	Rev. John Adamson, minister, Newton.	office	patron	-	1	
38.	Robert Meikle, schoolmaster, Newton.	ditto	heritors	-	1	
39.	Rev. Robert Hay, minister, Stow	ditto	-	1	-	
40.	Rev. Alexander Duncan, minister, Mid-Calder.	ditto	-	1	-	

MRS. LUTHERAN TABLES—continued.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
41.	Rev. William Fleming, minister, West Calder.	office -	heritors - -	1	1	
42.	Rev. John Somerville, minister, Currie.	ditto -	patron - -	-	-	
43.	John Palmer, schoolmaster, Currie	ditto -	heritors - -	1	1	
2. ADDITIONAL LIFE-RENTERS admitted in 1833 - - - 14.						
1.	James Clerk, younger, of Penicuik	grant -	Sir George Clerk	-	1	} - - joint life-renters.
2.	Rev. Lewis Hay Irving, minister, Abercorn.	ditto -	John Irving, W.S.	-	1	
3.	George Irving, W. S., Edinburgh	ditto -	ditto - -	-	1	
4.	Alexander M'Dougall, schoolmaster, Borthwick.	office -	heritors - -	-	1	
5.	Duncan Laing, schoolmaster, Crichton.	ditto -	ditto - -	-	1	
6.	James Baillie, of Pothill - -	succession	- - -	-	1	
7.	George Simpson, schoolmaster, Heriot.	office -	heritors - -	1	-	
8.	Rev. Dr. Grierson, minister, Cockpen.	ditto -	patron - -	-	1	
9.	Rev. Dr. Cornack, minister, Stow.	ditto -	ditto - -	-	1	
10.	Rev. Dr. Summers, minister, Mid-Calder.	ditto -	ditto - -	-	1	
11.	Peter Ramsay, banker, Edinburgh	grant -	- - Mr. Bonar, of Ratho,	-	1	
12.	Rev. Alexander L. Simpson, minister, Kirknewton.	office -	patron - -	-	1	
13.	Alexander Shand, schoolmaster, Kirknewton.	ditto -	heritors - -	-	1	
14.	Rev. Andrew Tod, minister, Baleno.	ditto -	- - -	1	-	
3. ADDITIONAL LIFE-RENTERS admitted in 1834 - - - 13.						
1.	Andrew Scott, W. S., Edinburgh	grant -	} - - David Scott, farmer - -	-	1	} - - joint life-renters.
2.	David Scott, junior, Northfield -	ditto -		-	1	
3.	William Forbes, advocate, Edinburgh.	ditto -		-	1	
4.	David Milne, advocate, Edinburgh	ditto -	} Sir David Milne	-	1	} ditto.
5.	Capt. Alexander Milne, R.N. -	ditto -		-	1	
6.	Alexander Gibson Carmichael, younger, of Skirling.	ditto -		1	-	
7.	Rev. William Thomson, minister, Slateford.	office -	- - -	1	-	
8.	Sir Thomas Gibson Carmichael, of Skirling.	succession	- - -	1	-	
9.	John Borthwick, schoolmaster, Glencorse.	office -	heritors - -	-	1	
10.	Robert Currie, schoolmaster, Newbattle.	ditto -	ditto - -	-	-	
11.	Aeneas Mackintosh, schoolmaster, Temple.	ditto -	ditto - -	-	1	
12.	Rev. Alexander Lawrie, minister, East Alder.	ditto -	- - -	1	-	
13.	Rev. James Clason, minister, Ratho	ditto -	patron - -	-	-	
4. ADDITIONAL LIFE-RENTERS admitted in 1835 - - - 36.						
1.	Rev. James Begg, minister, Liberton.	office -	patron - -	-	1	
2.	John Young, schoolmaster, Liberton.	office -	heritors - -	-	1	
3.	William Howison Crawford, of Crawfordland.	succession	- - -	-	1	
4.	Rev. David Horne, minister, Corsorphine.	office -	patron - -	-	-	
5.	Alexander Munro, younger, of Craiglockhart.	grant -	his father - -	-	1	

MID-LOTHIAN TABLES--continued.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
6.	John Inglis, advocate, Edinburgh	grant	Harry Inglis, W.S.	-	1	} -- joint life-renters.
7.	James Robertson, W.S., Edinburgh.	ditto	ditto	-	1	
8.	Kenneth Mackenzie, accountant, Edinburgh.	ditto	ditto	-	1	
9.	Rev. Joseph Brown, minister, Dalkeith.	office	-	1	-	
10.	Thomas Moffat, jun., flesher, Edinburgh.	-- marriage contract.	-	1	-	
11.	Rev. Charles Waldie, minister, Dalkeith.	office	-	1	-	
12.	John Hope, W.S., Edinburgh	grant	Hugh Waten, W.S.	-	1	
13.	John Ord Mackenzie, W.S., Edinburgh.	ditto	Mr. Mitchelson	-	1	
14.	Archibald Swinton, advocate, Edinburgh.	ditto	of Middleton	-	1	
15.	Robert Waterston, lapidary, Pathhead.	marriage	-	1	-	
16.	James Walker Drummond, jun., of Hawthornden.	grant	his father	-	1	
17.	Alexander Annandale, sen., Polton paper-mill.	reservation	-	1	-	} -- joint life-renters.
18.	Alexander Annandale, jun, ditto	grant	his father	1	-	
19.	Andrew Hunter, merchant, Edinburgh.	-- family settlement	-	1	-	
20.	Rev. Mr. Court, minister, Heriot	office	patron	-	-	
21.	Francis Aitchison	grant	} -- Aitchison, of Drummorie	-	1	} -- joint life-renters.
22.	David Aitchison	ditto		-	1	
23.	John Aitchison	ditto		-	1	
24.	Hugh Hope, writer, Edinburgh	ditto	-- his father, Sir John Hope.	-	1	
25.	Lord Ramsay	ditto	his father	-	1	
26.	Rev. John Robson, minister, Lasswade.	office	-	1	-	
27.	James Robertson, schoolmaster, Newton.	ditto	heritors	1	-	
28.	James Jackson, schoolmaster, Stow	ditto	ditto	-	1	
29.	James Armstrong, clerk, Boness	marriage	-	1	-	
30.	Joseph Scott Murray, schoolmaster, Mid-Calder.	office	heritors	1	-	
31.	Rev. William Learmouth, minister, West Calder.	ditto	patron	-	1	
32.	Andrew Bonar, banker, Edinburgh	grant	Mr. Bonar, of Ratho	-	1	
33.	William Bonar, banker, Edinburgh	ditto	ditto	-	1	
34.	William Fleming, banker, Edinburgh.	ditto	ditto	-	1	
35.	John Tawse, advocate, Edinburgh	ditto	ditto	-	1	
36.	Alexander Thomson, W.S., Edinburgh.	ditto	ditto	-	1	
5. ADDITIONAL LIFE-RENTERS admitted in 1836 - - - 59.						
1.	Henry Baxter, advocate, Edinburgh	ditto	-- Mr. Murray, of Henderland.	1	-	
2.	Archibald Davidson, advocate, Edinburgh.	ditto	ditto	1	-	
3.	William Beattie, writer, Edinburgh	ditto	ditto	1	-	} -- joint life-renters.
4.	John Parker, S.S.C., Edinburgh	ditto	ditto	1	-	
5.	Henry Inglis, W.S., Edinburgh	ditto	ditto	1	-	} - ditto.
6.	Peter Nimmo, writer, Edinburgh	ditto	ditto	1	-	
7.	Alexander E. Monteith, advocate, Edinburgh.	ditto	ditto	1	-	
8.	Andrew Rutherford, advocate, Edinburgh.	ditto	ditto	1	-	
9.	George Farquhar Graham, Edinburgh.	ditto	Carwin's Trustees	-	1	
10.	David Anderson, of St. Germain's	ditto	-- Mr. Anderson, of Moredan.	-	1	} -- joint life-renters.
11.	George Forbes, banker, Edinburgh	ditto	ditto	-	1	
12.	Richard Grindlay, merchant, Leith	ditto	ditto	-	1	} -- joint life-renters.
13.	James Grindlay Cowan, merchant, Leith.	ditto	ditto	-	1	
14.	Walter Cowan, merchant, Leith	ditto	ditto	-	1	

MID-LOTHIAN TABLES—continued.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
15.	James Duncan, M.D., Edinburgh	grant	his father -	-	1	joint life-renter.
16.	William Lamb, slater and glazier, Dalkeith.	ditto	his brother -	-	1	
17.	Alexander Stevenson, W.S., Edinburgh.	ditto	D.W.N. Stevenson	-	1	
18.	Thomas Stevenson, merchant, Leith.	ditto	ditto -	-	1	
19.	Hon. Charles Hope, advocate, Edinburgh.	ditto	John Thomson, of Royal Bank, Edinburgh	-	1	- - joint life-renters.
20.	John Thomson, jun., Royal Bank, Edinburgh.	ditto		-	1	
21.	James Munro, surgeon, 7th Foot	ditto	his father -	-	1	- - joint life-renters.
22.	Thomas Forrest, jun., of Comiston	ditto	his father -	1	-	
23.	Andrew Buchan, Glencorse Cottage.	ditto	- - W. Child, Edinburgh.	-	1	
24.	Edward Haie, clerk to W. Child, Edinburgh.	ditto	ditto -	-	1	
25.	William McIntyre, of Temple-hall, Edinburgh.	ditto	James Tytler, W.S.	-	1	
26.	David Mure, advocate, Edinburgh	ditto	Col. Hunter Blair	-	1	
27.	Lieut.-colonel Patrick Tytler, Edinburgh.	ditto	James Tytler, W.S.	-	1	
28.	Adam Urquhart, advocate, Edinburgh.	ditto	ditto -	-	1	
29.	Rev. Alexander Torrance, minister, Glencorse.	office	patron -	-	1	
30.	James Carstairs, of Kelmondhead, Edinburgh.	grant	his brother -	1	-	
31.	John Irving, R. N. -	ditto	- - John Irving, W. S., their father	-	1	
32.	Lieut. Alexander Irving, Royal Artillery.	ditto		-	1	
33.	Hon. Capt. R. S. Dundas -	ditto	Lord Melville -	-	1	- - joint life-renters.
34.	James Tulloch, grocer, Dalkeith -	succession	-	1	-	
35.	Carlye Bell, W. S., Edinburgh -	grant	- - Mr. Borthwick, of Crookston	-	1	
36.	William Ogilvy, of Chesters -	ditto		-	1	
37.	John Swinton, Edinburgh -	ditto		-	1	
38.	George Pott, of Lodrig -	ditto		-	1	
39.	Lieut.-colonel Charles Murray Hay, Coldstream Guards.	ditto	- - Mr. Mitchelson, of Middleton.	-	1	
40.	Adam Hay, banker, Edinburgh -	ditto	-	-	1	
41.	James Simpson, slater, Pathhead	succession	-	1	-	
42.	Rev. Mr. Elliot, minister, Ford -	office	-	1	-	
43.	Alexander Stevenson, Keirhill toll-bar.	succession or marriage grant	-	1	-	
44.	John Aitchison, brewer, Edinburgh.	grant	- - Aitchison, of Drummore	-	1	- - joint life-renters.
45.	Alexander Allan, advocate, Edinburgh.	ditto		-	1	
46.	Thomas Allan, banker, Edinburgh.	ditto		-	1	
47.	James Aitken, writer, Edinburgh -	ditto	Sir John Hope -	-	1	
48.	William Bonce, wine-merchant, Edinburgh.	ditto	ditto -	-	1	
49.	William Dickson, wine-merchant, Edinburgh.	ditto	ditto -	-	1	
50.	George William Hope, barrister, London.	ditto	ditto -	-	1	
51.	James Ker, E. I. C. S., Edinburgh	ditto	ditto -	-	1	
52.	James Hay Mackenzie, W. S., Edinburgh.	ditto	ditto -	-	1	
53.	Norman Pringle, Edinburgh -	ditto	ditto -	-	1	
54.	Peter Mitchell, schoolmaster, Cockpen.	office	heritors -	-	1	
55.	John Marshall Mowbray, writer, Edinburgh.	grant	his father -	-	1	
56.	William Roxburgh, schoolmaster, West Calder.	office	heritors -	-	1	
57.	Robert Johnston Brown, Edinburgh.	grant	his father -	-	1	
58.	James C. Brodie, of Lethen, Forres.	ditto	- - D. B. Wardlaw, of Gogarmount.	1	-	
59.	Hamilton Gray Gardner, writer, Edinburgh.	ditto	his father -	-	1	

MID-LOTHIAN TABLES—continued.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
6. ADDITIONAL LIFE-RENTERS admitted in 1835 - - - 85.						
1.	James Burgess, merchant, Edinburgh.	grant	- - -	1	-	- - joint life-renters.
2.	George Russell, writer, Edinburgh	ditto	- - Mr. Murray,	1	-	
3.	Robert Scott, mercantile agent, Edinburgh.	ditto	of Henderland -	1	-	
4.	George M'Callam, W. S., Edinburgh.	ditto	- - Mr. Murray,	1	-	- - joint life-renters.
5.	Thomas Ponton, architect, Edinburgh.	ditto	of Henderland -	1	-	
6.	John Gray, shawl manufacturer, Edinburgh.	ditto	- - -	1	-	
7.	John Melville, W. S., Edinburgh	ditto	- - -	1	-	- - joint life-renters.
8.	Charles Morton, W. S., Edinburgh	ditto	- - -	1	-	
9.	Ralph Richardson, tobacco manufacturer, Edinburgh.	ditto	- - Mr. Murray,	1	-	
10.	Dr. Robert Spittal, Edinburgh	ditto	of Henderland -	1	-	- - joint life-renters.
11.	John Wigham, junior, Edinburgh	ditto	- - -	1	-	
12.	John Wigham, tertius, shawl manufacturer, Edinburgh.	ditto	- - -	1	-	
13.	James Spittal, jun., shawl manufacturer, Edinburgh.	ditto	- - Mr. Murray,	1	-	- - joint life-renters.
14.	Dr. John Taylor, Edinburgh	ditto	of Henderland -	1	-	
15.	John Forrester, W. S., Edinburgh	ditto	- - -	-	1	
16.	John White, of Netherwood, Peebles.	ditto	- - -	-	1	- - joint life-renters.
17.	Peter Spalding Banks, Edinburgh	ditto	his father -	-	1	- - joint life-renters.
18.	James Anstruther, W. S., Edinburgh.	ditto	- - -	-	1	
19.	Charles Murray Barstow, accountant, Edinburgh.	ditto	- - -	-	1	
20.	Hugh Bonce, advocate, Edinburgh	ditto	- - Mr. Bonce,	-	1	- - joint life-renters.
21.	William Forbes, of Callendar	ditto	of Kennet -	-	1	
22.	Captain J. G. Graham, R. N., Gargannock.	ditto	- - -	-	1	
23.	Robert Ainslie, junior, W. S., Edinburgh.	ditto	- - -	1	-	- - joint life-renters.
24.	William E. Aytoun, W. S., Edinburgh.	ditto	- - -	1	-	
25.	John Montgomery Bell, advocate, Edinburgh.	ditto	- - -	1	-	
26.	John Stevenson Brown, Edinburgh.	ditto	- - -	1	-	- - joint life-renters.
27.	Alexander Currie, advocate, Edinburgh.	ditto	- - -	1	-	
28.	Sir J. G. Dalyell, advocate, Edinburgh.	ditto	- - -	1	-	
29.	George Dickson, cork-merchant, Leith.	ditto	- - -	1	-	- - joint life-renters.
30.	James Grant, tailor, Edinburgh	ditto	- - -	1	-	
31.	Thomas Hay, merchant, Leith	ditto	- - -	1	-	
32.	Robert Handyside, advocate, Edinburgh.	ditto	- - -	1	-	- - joint life-renters.
33.	Charles Kennedy, surgeon, Edinburgh.	ditto	- - Mr. Forrest,	1	-	
34.	James Mansfield Mackenzie, Edinburgh.	ditto	of Comiston -	1	-	
35.	James M'Donald, shawl manufacturer, Edinburgh.	ditto	- - -	1	-	- - joint life-renters.
36.	Thomas Milne, leather-merchant, Edinburgh.	ditto	- - -	1	-	
37.	John Mitchell, merchant, Leith	ditto	- - -	1	-	
38.	Andrew Murray, junior, advocate, Edinburgh.	ditto	- - -	1	-	- - joint life-renters.
39.	Thomas Orrock, druggist, Edinburgh.	ditto	- - -	1	-	
40.	James Ramsay, hosier, Edinburgh	ditto	- - -	1	-	
41.	Robert Renton, M.D., Edinburgh	ditto	- - -	1	-	- - joint life-renters.
42.	William Scoon, grocer, Edinburgh	ditto	- - -	1	-	
43.	John Smith, shipowner, Leith	ditto	- - -	1	-	
44.	William Taylor, soap manufacturer, Leith.	ditto	- - -	1	-	- - joint life-renters.
45.	Simon Sawers, of Newhouses, Dunbar.	ditto	- - -	1	-	

MID-LOTHIAN TABLES—continued.

No.	NAMES and DESIGNATIONS.	Nature of Right.	GRANTERS.	Whigs.	Tories.	REMARKS.
46.	John Veitch, cork-cutter, Leith -	grant -	- - - -	1	-	- - joint life-renters.
47.	David Watson, vintner, Edinburgh.	ditto -	- - - -	1	-	
48.	Adam White, of Fens, Leith -	ditto -	- - Mr. Forrest, of Comiston.	1	-	
49.	Robert White, W. S., Edinburgh -	ditto -	- - - -	1	-	
50.	Alexander Wylie, ironmonger, Edinburgh.	ditto -	- - - -	1	-	
51.	Arthur Dingwall, advocate, Edinburgh.	ditto -	- - - -	1	-	- - joint life-renters.
52.	Andrew Sceales, Leith - -	reservation	- - - -	1	-	
53.	Adolphus M. Sceales, wine-merchant, Edinburgh.	grant -	Andrew Sceales, merchant, Leith	1	-	
54.	George Ritchie, W. S., Edinburgh.	ditto -	- - - -	1	-	
55.	Edward Henderson, wine-merchant, Edinburgh.	ditto -	- - - -	1	-	
56.	William Haig, baker, Slateford -	ditto -	their father -	1	-	- - joint life-renters.
57.	James Haig, jun., baker, Slateford	ditto -		1	-	
58.	Alexander M'Millan, W.S., Edinburgh.	ditto -		1	-	
59.	Edward M'Millan, S. S. C., Edinburgh.	ditto -	- - Sir Thomas Carmichael -	1	-	- - joint life-renters.
60.	Archibald Trotter, younger, of Dreghorn.	ditto -	- - Mr. Trotter, of Dreghorn -	-	1	- - joint life-renters.
61.	Capt. Henry Dundas Trotter -	ditto -		-	1	
62.	Alexander Binning Munro, W. S., Edinburgh.	ditto -		-	1	
63.	James Goodall, gardener, Newbattle.	ditto -	- - Marquis of Lothian -	-	1	- - joint life-renters.
64.	John Grainger, Harestanes, Jedburgh.	ditto -		-	1	
65.	Hon. Chetwynd Talbot - -	ditto -		-	1	
66.	Alexander Mackintosh, hatter, Edinburgh.	ditto -	- - - -	-	1	- - joint life-renters.
67.	Hon. Charles Lennox Ker - -	ditto -	Marquis of Lothian	-	1	
68.	William Trotter, jun., clerk, Edinburgh.	ditto -	his father -	1	-	
69.	Charles Cunningham, jun., Edinburgh.	ditto -	- - - -	-	1	
70.	Charles Robertson, advocate, Edinburgh.	ditto -	- - - -	-	1	
71.	Ludovic Colquhoun, advocate, Edinburgh.	ditto -	- - - -	-	1	- - joint life-renters.
72.	William M'Donald, of Powderhall, Edinburgh.	ditto -	- - - -	-	1	
73.	Robert M'Queen, of Bousfield, Peebles.	ditto -	- - Col. Thomas Hunter Blair, of Dunskey -	-	1	
74.	John Hall Maxwell, advocate, Edinburgh.	ditto -	- - - -	-	1	
75.	James Alexander Russell, Edinburgh.	ditto -	- - - -	-	1	
76.	Thomas L. Veitch, W. S., Edinburgh.	ditto -	- - - -	-	1	- - joint life-renters.
77.	Rev. William Harkness, minister, Fala.	office -	patron -	1	-	
78.	William Ker, vintner, Newbattle-inn.	grant -	Marquis of Lothian	-	1	
79.	James Finlay, writer, Edinburgh	ditto -	- - - -	-	1	
80.	James Thorburn, builder, Edinburgh.	ditto -	- - - -	-	1	
81.	James Murray, younger, of Craigend, Peebles,	ditto -	- - Mr. Murray, of Craigend -	-	1	- - joint life-renters.
82.	Major-gen. James Russell, of Ashysteel.	ditto -		-	1	
83.	James Gourlay, schoolmaster, Ratho.	office -		-	-	
84.	George Glendinning, farmer -	grant -	their father -	-	1	- - joint life-renters.
85.	Peter Glendinning, farmer -	ditto -		-	1	

February 1838.

John C. Brodie.

MID-LOTHIAN TABLES—continued.

(No. 4.)

SPECIAL TABLE, showing the whole Number of JOINT PROPRIETORS enrolled in the County of *Mid-Lothian* in each of the Years 1832, 1833, 1834, 1835, 1836 and 1837, with the Names and Descriptions and Places of Residence of such Joint Proprietors, and the Nature of their several Rights.

NAMES and DESIGNATIONS.	Nature of Right, or how acquired.	Number in each Batch.	Total Numbers.	REMARKS.
1. JOINT PROPRIETORS enrolled in 1832 - - - 19.				
TORIES:				
Sir James Montgomery - - - -	} - - deed of set- tlement.	3	- -	brothers.
Robert Montgomery, Lord Treasurer's Remembrancer.				
Archibald Montgomery - - - -	} joint trade -	2	- -	father and son.
James Baxter, builder, Duddingstone				
John Baxter, builder, Duddingstone	} joint trade -	2	- -	brothers.
Philip Cadell, proprietor, mills, &c., Cra- mond.				
James John Cadell, ditto - ditto -	} succession -	2	9	
Charles Elder M'Ritchie, proprietor, Currie				
Thomas Elder M'Ritchie, W.S. - -				
WHIGS:				
John Bryce, senior, coal-agent, Ratho -	} joint trade -	2	- -	father and son.
John Bryce, junior, ditto - ditto -				
NEUTRALS, or POLITICS unknown:				
James Boyd, wright, Edinburgh - -	} marriage -	3	- -	{ - - brothers-in-law; married three sis- ters.
John Boyd, wright, Edinburgh - -				
Thomas Davidson, teacher - - -	} joint trade -	3		
William Fraser, St. Ann's distillery, Lass- wade.				
John Macnab, St. Ann's distillery, Lasswade	} succession -	2	- -	{ - - James Belfrage, who is stated after- wards as enrolled in 1833, took by the same deed.
Alex. Ross, St. Ann's distillery, Lasswade				
George Belfrage, Newmills, Currie - -			8	
William Belfrage, Newmills, Currie -			19	
2. JOINT PROPRIETORS added to Register in 1833 - - - 20.				
TORIES:				
William Forbes Mackenzie, advocate, Edinburgh.	} purchase -	2		
John Mackenzie, writer, Edinburgh -				
William Allan, of Glen, Edinburgh -	} purchase -	9	- -	{ - - the property was acquired by 10 indi- viduals, but no claim was made on the 10th share in 1833; Mr. Moir was enrolled on it in 1835.
Francis Anderson, writer, Edinburgh -				
Robert Dundas Cay, W.S., Edinburgh	} purchase -	4		
Patrick Boyle Mure, advocate, Edinburgh				
Charles Neaves, advocate, Edinburgh -	} purchase -	1	- -	{ - - Mr. Whigham's qua- lification is two shares in the Torsonce Inn.
William Robertson, jun., W.S., Edinburgh				
Patrick Robertson, advocate, Edinburgh -	} purchase -	1	-	
John Thomson, farmer, Cowden - -				
William Williams, smith, Dalkeith - -	} purchase -	1	-	
James Metcalf, steward, Dalkeith Palace -				
Matthew Marshall, groom, Dalkeith Palace	} purchase -	1	-	
James Macdonald, gardener, Dalkeith Palace.				
Robert M. Parker, upholsterer, Dalkeith -			16	
Robert Whigham, advocate, Edinburgh -				
WHIGS:				
George Cox, merchant - - - -	} succession -	3	- -	{ - - Abram Cox was after- wards enrolled in 1836 un- der the same deed.
Robert Cox, W.S., Edinburgh - - -				
James Cox, student of medicine - - -	} succession -	1	- -	{ - - See note to the names of George and William Bel- frage, 1833.
James Belfrage, Newmills, Currie - -				
			4	
			20	

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS	Nature of Right, or how acquired.	Number in each Batch.	Total Numbers.	REMARKS.
3. JOINT PROPRIETORS added to the Register in 1834 - - - 7.				
TORIES:				
Donald Horne, W.S., Edinburgh - -	} purchase -	2	4	{ - - Mr. Pringle's qualification is two shares in the Torsonce Inn.
William Smith, banker, Edinburgh - -				
Alexander Pringle, of Whytbank - -	purchase -	1		
Thomas Robertson, blacksmith, Stockbridge	succession -	1		
WHIGS:				
David Davidson, Meadowbank Brewery, South Leith.	} joint trade -	2	3	
Joseph Maitland, Meadowbank Brewery, South Leith.				
George Lorimer, builder, Edinburgh -	succession -	1	7	
4. JOINT PROPRIETORS added to the Register in 1835 - - - 29.				
TORIES:				
Alexander M'Neil, advocate, Edinburgh -	} purchase -	2	3	{ - - see note to cases of William Allan and others in 1833.
Alexander Kennedy, W. S., Edinburgh -				
George Moir, advocate, Edinburgh -	purchase -	1		
WHIGS:				
James Thomson, jun., candlemaker, Dalkeith.	} grant -	2	-	{ - - gratuitous disposition from their father.
Robert Thomson, candlemaker, Dalkeith				
Walter Adam, M.D., Edinburgh - -	} purchase -	6	-	
John Ramsay, merchant, Edinburgh -				
George Sewald, clothier, Edinburgh -				
James Spittal, shawl manufacturer, Edinburgh.				
William Whitehead, merchant, Edinburgh				
William Wemyss, deputy commissary-general, Edinburgh.	} purchase -	2	-	
James Crawford, advocate, Edinburgh -				
Thomas Mansfield, accountant, Edinburgh	} purchase -	2	-	
James Ivory, advocate, Edinburgh - -				
William Ivory, W. S., Edinburgh - -	} purchase -	2	-	
Alexander M'Grigor, jun., writer, Glasgow				
Patrick Murray, writer, Glasgow - -				
Robert Wilson, Fushie-bridge - -	} grant -	2	-	{ - - were fiars of property over which their mother had a life-rent, which she recovered.
Thomas Wilson, Fushie-bridge - -				
George Johnstone, draper, Dalkeith -	} grant -	2	-	{ - - Pringle Johnstone, the father, was sole proprietor, and disposed the subjects to himself and his two sons, George and William, jointly.
Pringle Johnstone, draper, Dalkeith -				
John Kerr, Edinburgh - - - -	} purchase -	2	-	{ - - Kerr was originally sole proprietor, and disposed the subjects to himself and Mr. Lothian, jointly.
Maurice Lothian, solicitor, Edinburgh -				
James Charles, Cockpen - - - -	grant -	1	-	{ - - gratuitous life-rent disposition from his father.
Robert Haldane, writer, Galashiels -	purchase -	1	-	{ - - two shares of the Torsonce Inn.
James Kay, shoemaker, Ratho - - -	} purchase -	2	-	{ - - brothers, and partners in trade.
David Kay, shoemaker, Ratho - - -				
Alexander Johnston, baker, Mid-Calder -	} purchase -	2	-	{ - - brothers; in partnership in trade.
George Johnston, baker, Mid-Calder -				
			26	
			29	

MID-LOTHIAN TABLES— *continued.*

NAMES and DESIGNATIONS.	Nature of Right, or how acquired.	Number in each Batch.	Total Numbers.	REMARKS.
5. JOINT PROPRIETORS added to the Register in 1836 - - - 97.				
TORIES :				
James Spears, tollman, South Leith -	} purchase -	2		
George Spears, tollman, South Leith -				
George Dunlop, merchant, Leith -	} purchase -	2		
George Dunlop, junior, Leith -				
Humphrey Graham, W. S., Edinburgh -	} purchase -	2		
Adam Wilson, depute-clerk of session, Edinburgh.				
Henry Maxwell, merchant, Leith -	} purchase -	2		
Hugh Bates Maxwell, Cheltenham -				
George Menzies, ship-builder, Leith -	} - deed of set- tlement.	2		
Thomas Menzies, ship-builder, Leith -				
John Archibald, teacher, Musselburgh -	} purchase -	2		
Adam Hislop, Merchant, Dalkeith -				
Alexander Chancellor, of Shield-hill, La- nark.	} purchase -	3		
William Wood, merchant, Leith -				
Christopher Wood, junior, merchant, Leith				
Alexander Henderson, manager for King's printers, Edinburgh.				
Charles Lawson, seedsman, Edinburgh -				
Allan Stevenson, engineer, Edinburgh -				
John Tait, secretary to the Duke of Buc- cleugh.	} purchase -	7		
Adam Warden, surgeon, Edinburgh -				
Robert Wilson, junior, builder, Dalkeith -				
William Williamson, huntsman to the Duke of Buccleugh.				
Robert Graham, merchant, Leith -				
John Hardie, merchant, Leith -				
James Hardie, merchant, Leith -				
James Wedderburn, Heriot-row, Edin- burgh.				
Christopher Wood, merchant, Leith -				
John Henderson Wood, merchant, Leith -				
Edward Wood, merchant, Leith -				
Donald Horne, W. S., Edinburgh -				
Benjamin Tait, upholsterer, Dalkeith -	} purchase -	2		
William White, manufacturer, Dalkeith -				
George White, residing in Dalkeith -	} purchase -	2		
Allan Elliot Lockhart, Edinburgh -				
Henry Corse Scott, Edinburgh -	} purchase -	1		{ - - shares in the Tor- sonce Inn.
Alexander Blackwood, bookseller, Edin- burgh.				
Alexander Thomas Blackwood, bookseller, Edinburgh.				{ - ditto - ditto.
James Blackwood, Edinburgh -				
Robert Blackwood, bookseller, Edin- burgh.				
Albert Cay, wine merchant, Edinburgh -				
Alexander Cunningham, W. S., Edin- burgh.	} purchase -	14		
James Heron, W. S., Edinburgh -				
William Robertson, advocate, Edinburgh -				
James Rose, W. S., Edinburgh -				
Thomas Scott, accountant, Edinburgh -				
Walter Scott, late of E. I. C. S. Edin- burgh.				
James Sinson, M. D., Edinburgh -				
James Smail, S. S. C., Edinburgh -				
James Ross, farmer, Boness -				
David Smith, W. S., Edinburgh -				
		1	50	
WHIGS :				
Holmes Ivory, accountant, Edinburgh -	} purchase -	2		
Æneas Macbean, W. S., Edinburgh -				
Abram Cox, joint proprietor, Holemill -	} succession -	1		{ - - see George Cox and others, enrolled as joint proprietors in 1833.

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Nature of Right, or how acquired.	Number in each Batch.	Total Numbers.	REMARKS.
<i>WGS—continued.</i>				
Alexander Anderson, Edinburgh - -	} purchase -	3	-	{ - - see Pringle and George Johnstone, en- rolled as joint propri- etors in 1835.
Elliot Anderson writer, Galashiels - -				
Allan Freer, clerk, Melrose - - -				
William Johnstone, draper, Dalkeith - -				
George Taylor, manufacturer, Tillicorthy	- - succession, or deed of set- tlement.	1	-	
William Johnstone, engraver, Edinburgh -	} purchase -	2		
James Tweedie, farmer, Denchoie, East Lothian.				
Robert Murray, brewer, Dumfries - -	- - deed of set- tlement.	1		
John M'Intosh Balfour, W. S., Edin- burgh.	} purchase -	16		
Alexander Donald, W. S., Edinburgh -				
Charles Ferrier, accountant, Edinburgh -				
Thomas Lewis Gibson, writer, Edinburgh -				
Joseph Grant, W. S., Edinburgh - -				
Francis Howden, Edinburgh - - -				
Patrick Irvine, W. S., Edinburgh - -				
Roderick Mackenzie, W. S., Edinburgh -				
John Maitland, accountant, Edinburgh -				
Adam Paterson, W. S., Edinburgh - -				
Thomas Robertson, accountant, Edin- burgh.				
James Lyme, professor of surgery, Edin- burgh.				
William Waddell, W. S., Edinburgh -				
Thomas W. Webster, advocate, Edinburgh				
Alexander Younie, writer, Edinburgh -				
David Hunter, of Blackness, Dundee -				
Hugh Lees, writer, Galashiels - -	} purchase -	1	-	{ - - part of Mr. Lees's qualification is a share in the Torsonce Inn.
James Anderson, merchant, Edinburgh -				
Peter Crooks, W. S., Edinburgh - -	} purchase -	5		
Thomas Crooks, Edinburgh - - -				
Andrew R. Lymington, merchant, Edin- burgh.	} purchase -	12		
John Deans, farmer, Ponston, East Lothian				
Adam Black, bookseller, Edinburgh -				
Charles Black, bookseller, Edinburgh -				
Maurice Lothian, senior, Edinburgh -				
Maurice Lothian, junior, Edinburgh -				
Duncan M'Laren, linendraper, Edinburgh				
Charles M'Laren, Edinburgh - - -				
William Oliphant, senior, bookseller, Edin- burgh.				
William Oliphant, junior, bookseller, Edin- burgh.				
William Renton, merchant, Edinburgh -				
John Ritchie, Edinburgh - - -				
John Stewart, wine-merchant, Edinburgh	} purchase -	2		
John R. Stoddart, W. S., Edinburgh -				
John R. Gracie, W. S., Edinburgh - -	} succession -	1		
Andrew Millar, merchant, Edinburgh -				
Johnson Kerr, shopman, Aberdeen -			48	
6. JOINT PROPRIETORS added to the Register in 1837.			98	
TORIES:				
John Jones, Liberton-tower, Liberton -	} purchase -	2		
Robert Drybrough Menzies, ship-builder, Leith.				
William Thomson, student of medicine -	} succession -	1		
J. P. Bertram, W. S., Edinburgh - -				
Peter Blackburn, Edinburgh - - -	} purchase -			
John Clerk, third son of Sir George Clerk, Bart.				
Lord Elcho - - - - -				
William Ferguson, surgeon, Edinburgh -				
David Gillespie, of Kirkton, Fife - -				

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Nature of Right, or how acquired.	Number in each Batch.	Total Numbers.	REMARKS.																																
TORIES—continued.																																				
Edward S. Gordon, advocate, Edinburgh - Thomas Gordon, Lochlee by Brechin - George Irving, of Newton, Lanark - - Alexander Low, writer, Edinburgh - - John Maxton, wine merchant, Leith - - Andrew Park, timber merchant, Leith - - Robert Ritchie, ironmonger, Edinburgh - Archibald Smith, advocate, Edinburgh - Archibald Stewart, M. D., Edinburgh - Alexander Watson, surgeon, Edinburgh - Francis B. Douglas, Edinburgh - - John M'Kenzie Lanner, writer, Edinburgh Duncan M'Neill, advocate, Edinburgh - Alexander Tait, R. N., Edinburgh - - Robert Walker Aitken, brewer, Meadow- bank.	purchase -	16																																		
Alexander Campbell, brewer, Edinburgh - John Sprott, E. I. C. S., Edinburgh - - Charles Baillie, advocate, Edinburgh - Alexander Sinclair, Edinburgh - - John Alexander Pringle, E. I. C. S. - - Lieut.-colonel John Geddes, Edinburgh - John Gray, solicitor-at-law, Edinburgh - Francis Brodie, W. S., Edinburgh - - John Brodie, W. S., Edinburgh - - Robert Cowan, W. S., Edinburgh - - Colonel William Turner, Edinburgh - - David Scott Threshie, W. S., Edinburgh - William Lockhart, of Milton Lockhart - David Finlay, factor, at Seaton, near Aberdeen.					purchase -	4																														
Joseph Mitchell, W. S., Edinburgh - - John Maitland, writer, Edinburgh - - George M'Lauchlan, W. S., Edinburgh - George Patton, advocate, Edinburgh - David Whigham, W. S., Edinburgh - - John R. Calvert, W. S., Edinburgh - - John Purcell, clerk, Dalkeith - - - John Sutton Williams, R. N., Inveresk - Daniel Fisher, S. S. C., Edinburgh - - Erskine Douglas Sandford, advocate, Edinburgh.									purchase -	1																										
Robert W. Hamilton, Edinburgh - - Alexander James, solicitor, Edinburgh - John James, bootmaker, Edinburgh - - James Allan Maconochie, Edinburgh -													purchase -	2																						
																	purchase -	6																		
																					purchase -	7														
																									purchase -	5										
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MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Nature of Right, or how acquired.	Number in each Parish.	Total Numbers.	REMARKS.
<i>WHIGS—continued.</i>				
James Peddie, jun., W.S., Edinburgh -	purchase -	8		
George Napier, advocate, Edinburgh -				
Donald S. Pedie, accountant, Edinburgh.				
Joseph Baird, merchant, Edinburgh -				
William Grinton, linendraper, Edinburgh				
James Chisholm, clothier, Edinburgh -				
James Pedie Falkner, S.S.C., Edinburgh.	- - succession or deed of set- tlement.	3		
John M'Lauchlan, merchant, Edinburgh.				
William Bald, labourer, Dalkeith - -				
John Bald, gardener, Dalkeith - -				
Robert Bald, residing in Dalkeith - -				
William Taylor, candlemaker, Dalkeith -	succession -	1		
John Murray, Amelia-place, Edinburgh -	purchase -	1	31	
			83	

February 1838.

John C. Brodie.

(No. 5.)

SPECIAL TABLE, showing the whole Number of JOINT TENANTS enrolled in the County of Mid-Lothian in each of the Years 1832, 1833, 1834, 1835, 1836 and 1837, with the Names and Descriptions of such Joint Tenants.

NAMES and DESIGNATIONS.	Number in each Batch.	Total Numbers.	REMARKS.
1. JOINT TENANTS admitted in 1832 - - - 50.			
TORIES :			
Alexander Dods, farmer, Granton - - - -	2	23	
Peter Dods, farmer, Granton - - - -			
John Ballantyne, nurseryman, Dalkeith - - - -	2		
William Ballantyne, nurseryman, ditto - - - -			
Archibald Potts, farmer, Hagbrae - - - -	2		
Gideon Potts, farmer, Hagbrae - - - -			
George Ainslie, farmer, Moat - - - -	2		
William Ainslie, farmer, Moat - - - -			
James Alston, farmer, Oatslie - - - -	2		
John Alston, farmer, Oatslie - - - -			
William Familton, farmer, Hillend - - - -	2		
Alexander Familton, farmer, Hillend - - - -			
James Gulland, farmer, Moncktonhall - - - -	2		
John Gulland, farmer, Moncktonhall - - - -			
George Smith, farmer, Chalkieside - - - -	2		
John Smith, farmer, Chalkieside - - - -			
Alexander Tod, farmer, Smeatonshaw - - - -	2		
James Tod, farmer, Smeatonshaw - - - -			
George Dobby, farmer, Potton East Mains - - - -	2		
John Dobby, farmer, Potton East Mains - - - -			
William Charles Smith, farmer, Mountmarle - - - -	2		
John Smith, farmer, Mountmarle - - - -			
James Crawford, gardener, Beechwood Mains - - - -	1		
WHIGS :			
James King, millmaster, Duddingstone - - - -	2		
Archibald King, millwright - - - -			
Peter Idington, farmer, Silverknows - - - -	2		
John Idington, farmer, Silverknows - - - -			
Alexander Cowan, tenant, Valleyfield Mills - - - -	2		
Charles Cowan, tenant, Valleyfield Mills - - - -			

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Number in each Batch.	Total Numbers.	REMARKS.
WHIGS—continued.			
Hugh Cowan, blacksmith, Corstorphine - - -	1		
George Moffat, farmer, Fordel Parks - - -	2		
Robert Moffat, farmer, Fordel Parks - - -			
Charles Crossland Hay, Roslin Powder Mills - - -	4		
Hezekiah Merricks, - - - ditto - - -			
James Merricks, - - - ditto - - -			
John Merricks, - - - ditto - - -			
Lockhart Stodart, farmer, Damhead - - -	2		
Adam Stodart, farmer, Damhead - - -			
Henry Boak, farmer, Crofhead - - -	2		
George Boak, Crofhead - - -			
James Neill, farmer, Adambrae - - -	2		
David Neill, farmer, Adambrae - - -			
Patrick Gray, senior, farmer, Freeland - - -	3		
Robert Gray, farmer, Freeland - - -			
Patrick Gray, jun., farmer, Freeland - - -			
William Ker, paper-maker, Kinleith Mill - - -	3		
William Russell, ditto - - ditto - - -			
Henry Russell, ditto - - ditto - - -			
James Brown, paper-maker, Eskmills - - -	2		
John Brown, paper-maker, Eskmills - - -			
		27	
		50	
2. JOINT TENANTS admitted in 1833 - - - 8.			
TORIES :			
George Johnston, jun., stone merchant - - -	2		
Alexander Johnston, W. S., Edinburgh - - -			
Robert Smart, flesher, Liberton - - -	1		
Andrew Brunton, farmer, Dryden - - -	2		
Walter Brunton, farmer, Dryden - - -			
		5	
WHIGS :			
Matthew Forster, coalmaster, Cranston - - -	3		
William Forster, - - ditto - - ditto - - -			
George Forster, - - ditto - - ditto - - -			
		3	
		8	
3. JOINT TENANTS admitted in 1834 - - - 15.			
TORIES :			
Thomas Ritchie, farmer, Castlclaw - - -	2		
John Ritchie, farmer, Castlclaw - - -			
Andrew Harper, farmer, Brunston - - -	2		
John Harper, farmer, Brunston - - -			
Henry Douglas, tenant, Limekilns - - -	2		
William Douglas, tenant, Limekilns - - -			
John Crawford, gardener, Beechwood - - -	1		
John Henderson, farmer, Eastmill - - -	1		
John Murray, advocate, Edinburgh - - -	1		
		9	
WHIGS:			
John Graham, farmer, Egypt - - -	2		
James Graham, farmer, Egypt - - -			
Peter Carror, preacher of the Gospel, Perth - - -	2		
John Carror, farmer, West Pilton - - -			
Thomas Robertson, farmer, Fala North Mains - - -	2		
James Robertson, innkeeper - - -			
		6	
		15	

{ - - life-rent tenant on a
10 l. qualification; lease
granted by father.

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Number in each Batch.	Total Numbers.	REMARKS.	
4. JOINT TENANTS admitted in 1835 - - - 18.				
TORIES :				
Andrew Buchan, farmer, Shaws - - - -	2 1 1	4	{ - - life-rent tenant, on 10 <i>l.</i> qualification; lease granted by father.	
James Buchan, farmer, Shaws - - - -				
Andrew Murray, junior, Edinburgh - - - -				
William Henderson, British Linen Company, Edin- burgh.				
WHIGS :				
Daniel Robertson, tenant, Windmill park - - -	1	14	{ - - acquired a long lease of a 10 <i>l.</i> subject by purchase.	
William Phipps, Cramond Iron-works - - -	1			
Richard Alexander, wine-merchant, Edinburgh - - -	2			
James Alexander, wine-merchant, Edinburgh - - -	1			
Mathew Forster, coal-master, Edgehead - - -	1			
George Stenhouse, farmer, Blackdab - - -	2			
James Ainslie, farmer, Pentland - - -				
John Ainslie, farmer, Pentland - - -	2			
James Marshall, iron-merchant, Leith - - -				
Thomas Stewart, farmer, Netherton - - -	2			
James Potts, farmer, Easter Causeway-end - - -				
John Potts, farmer, Easter Causeway-end - - -	2			
Thomas Stoddart, farmer, Ingliston West Mains - - -				
Alexander Stoddart, farmer, ditto - - -				
			18	
5. JOINT TENANTS admitted in 1836 - - - 23.				
TORIES :				
Robert Laing, farmer, Somerside - - -	1	11	{ - - long lease of a 10 <i>l.</i> subject.	
John Kay, pasteboard manufacturer - - -	2			
William Kay, pasteboard manufacturer - - -				
William P. Alison, M. D., Edinburgh - - -	1			
John Thomson, senior, Crichton Dean Inn - - -	3			
James Thomson, cabinet-maker Jedburgh - - -				
John Thomson, junior, writer, Kelso - - -	1			
Robert Hunter, farmer, Burghlee - - -				
William Bertram, farmer, Sawfield - - -	2			
John Bertram, farmer, Sawfield - - -				
Charles Hogg, farmer, Toxside-hill - - -	1	12	{ - - father enrolled as tenant in previous year.	
WHIGS :				
James Robertson, baker, Edinburgh - - -	1	12	{ - - enrolled on his wife's <i>pro in diviso</i> 4th share in the lease of a 10 <i>l.</i> subject.	
William Smith, clothier, Edinburgh - - -	1			
John Baillie, Currie Inn - - -	2			
John Mutter, Currie Inn - - -				
Henry Henderson, carpet manufacturer - - -	1			
James Abernethie, farmer, Blackhope - - -	3			
Alexander Abernethie, farmer, Blackhope - - -				
David Abernethie, baker, Penicuik - - -	1			
John Pennycook, tenant, Leithhead Quarry - - -	1			
William M'Murray, Kenleith Paper-mill - - -	1			
William Shinen, farmer, Guile - - -	1	13	{ - - father previously on the roll as sole tenant.	
John Inglis, farmer, Brothershiells - - -	1			
		23		
6. JOINT TENANTS admitted in 1837 - - - 21.				
TORIES :				
Richard Wallace, gardener, Dalkeith - - -	1	2	{ - - father previously sole tenant.	
Thomas Jameson, farmer, Straiton - - -	1			
Alexander Simpson, jun., farmer, Hawthornden - - -	1			
John G. Tait, Edinburgh - - -	2			
Peter Tait, Edinburgh - - -				
Thomas Gibson, senior, farmer, Windydoors - - -	2			
Thomas Gibson, junior, farmer, Windydoors - - -				

MID-LOTHIAN TABLES—continued.

NAMES and DESIGNATIONS.	Number in each Batch.	Total Numbers.	REMARKS.
WHIGS:			
John Miller, farmer, Inverleith Mains - - - -	2		
Thomas Miller, ditto - ditto - - - -			
Archibald W. Dumbreck, farmer, Comiston - -	1		
John Penman, farmer, Bonaby - - - -	1		
William Inglis, farmer, Pardovan - - - -	2		
John Inglis, farmer, Pardovan - - - -			
Richard Whytock, carpet manufacturer, Edinburgh -	1		
George Inglis, farmer, Brothershiells - - - -	1		
Robert Roughhead, farmer, Sheiling-brae - - -	2		{ - - father and son; father previously sole tenant.
Peter Roughhead, farmer, Sheiling-brae - - -			
William Buchan, farmer, Ratho hall - - - -	2		
Andrew Buchan, farmer, Ratho-hall - - - -			
John Melvin, farmer, Rathomains - - - -	2		{ - - father and son; father previously sole tenant.
James Melvin, farmer, Rathomains - - - -			
		14	
		21	

February 1838.

John C. Brodie.

Appendix, No. 2.

PAPER delivered in by *John Hope, Esq.*, and referred to in his Evidence of
22 February 1838.

AMOUNT OF THE LINLITHGOWSHIRE CONSTITUENCY
For the respective Years.

Year	Number of Names actually on the Register.	
1832 - - - - -	600	600
1833 - - - - -	654	
1834 - - - - -	704	
1835 - - - - -	711	
1836 - - - - -	740	
1837 - - - - -	753	
In these numbers are included a small accumulation of various dead and disqualified names not yet expunged, and sundry double enrol- ments. I do not know all, but I have a list of 34 names here; therefore actual number year 1837 - - - - -		
	753	
Deduct - - - - -	34	
Leave for this year 1837 - - - - -		719
Increase since 1832 - - - - -	- -	119

London, 23 February 1837.

John Hope, W. S.

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FICTITIOUS VOTES (SCOTLAND).

I N D E X

TO

REPORT AND EVIDENCE OF SELECT COMMITTEE OF 1837,

AND TO THE

REPORT AND EVIDENCE FROM SELECT COMMITTEE OF 1837-38,

ON

FICTITIOUS VOTES (SCOTLAND).

(Papers No. 215 of 1837, and No. 590 of this Session.)

Ordered, by The House of Commons, to be Printed, 13 & 14 July 1838.

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2. *In Mid Lothian.*

1. *In Peebles.*

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| 2. <i>System of Creation.</i> | 8. <i>In Caithness.</i> |
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In 1832 there were 43 life-renters enrolled, principally consisting of ministers and schoolmasters; they have gradually increased each successive year, and now amount to 235, *Brodie* 11754-11758—Of the 235 enrolled for Mid Lothian, from 170 to 180 belong to the new kind of life-renter, *Brodie* 11760—Are made nominally by purchase; no money passes, the price being settled by bill; there are a great number of cases in which back leases are granted by the life-renter to the proprietor, who becomes tenant and fiar, instead of being absolute proprietor, *Brodie* 11763—Number of life-renters made in each year from 1832 to 1838, distinguishing those made on the Tory and Liberal interest, *Brodie* 11963—Tables, showing the nature and description of the life-renters.—11.

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Little, Thomas, of Blainslie. Claimed as joint proprietor for Roxburgh, in 1832, *Thompson* 7842, p. 26.

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M'Arthur, Peter, butler to Sir James Montgomery. Registered as voter on Sir James's estate in Peebles, *Mackenzie* 8226.

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- New Hall Farm.** Four life-renters created on this property, as voters for county of Selkirk, *Haldane* 2214; *Horne* 6508.
- Nicholl, Thomas.** His property in Selkirkshire bought up by Francis Binnie, of Bowhill, entirely for the franchise, *Paterson* 5557.
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- Nisbett, James.** Circumstances under which he became a voter for Selkirkshire, *Horne* 6626.
- Nixon, William**, manufacturer. Enrolled as a life-renter on the lands of Redford Green, county of Selkirk, *Haldane* 2174.
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NON-RESIDENT VOTERS :

1. *Effect of, on Constituencies.*
2. *Construction of Reform Act as to.*
3. *In Selkirkshire.*
4. *In Roxburghshire.*
5. *In Linlithgow.*

1. *Effect of, on Constituencies.*

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OATHS :

1. *Administration of, in Registration Courts.*
2. *Power of Sheriffs to administer.*
3. *Tendency to Perjury.*

1. *Administration of, in Registration Courts.*

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1. *Fictitious Votes.*
2. *Life-rents.*
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1. *Fictitious Votes.*

To a certain degree the Reform Act affords facilities to the creation of fictitious votes, *Horne* 7342—Taking enfeoffment would, to a certain extent, remedy the evil occasioned by the facility, *Horne* 7347—In respect of value, the Reform Act opens a wide door for the admission of claims which may be considered bad, *Horne* 7362; *Shaw* 7891—Description of the sort of voters contemplated under the Reform Act, *Horne* 7405—Alterations which have taken place in the nature of holdings since the Reform Bill, *Paterson* 4586; *Craufurd* 6864—Present mode of acquiring qualification of a nature quite unusual and unknown; could not be in contemplation of the Reform Act, *Craufurd* 6895; *Shaw* 7890—Effect of the Reform Bill in facilitating the creation of life-rent votes, *Shaw* 7891—The present Act does not contemplate a voter having a free and unincumbered 10*l.* from property, *Shaw* 8048—Object of that Act to do away with the old paper qualification, *Brodie* 11756.

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1. *Generally.*
2. *Life-rents.*
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4. *Attendance of Witnesses.*

1. *Generally.*

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Representation of Counties. The fact of an entailed proprietor in a county having only a single vote, while every acre of unentailed property is available, shows that property itself is not represented, *Brodie* 12164.

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RESIDENCE:

1. Generally.
2. Enforcement of.
 - I. Advantages.
 - II. Objections.
3. Definition of.

1. Generally.

Difference as to qualification as to residence in burghs and counties, *Craufurd* 6926—Evidence as to residence necessary before a tenant can claim to be registered, *Horne* 7414—Object of the Reform Act that every man who had 10*l.* in a county should be registered, whether resident or not, *Brodie* 12044.

2. Enforcement of.

I. Advantages.

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Resident Voters. Feel aggrieved by the intrusion of non-resident voters, *Craufurd* 6914—Resident electors and the poorer classes complain loudly of the intrusion of non-resident voters, *Craufurd* 6922—Not contemplated by the Reform Bill that resident voters should be interfered with, by persons coming from other districts, *Craufurd* 6920—The greater the number of voters truly resident within the county, who obtain a fair qualification, the better, *Brodie* 12102.

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Richardson, John, and Mr. Currie. Enrolled as joint proprietors, as voters for Selkirkshire, *Haldane* 1406—Evidence as to their enrolment, *Douglas* 5243.

Richardson, Ralph, of Edinburgh. Claimed as joint life-renter for Roxburgh, in 1835, 1836, *Thompson* 7842, pp. 29, 30—Enrolled as life-renter for county of Peebles, on Kilbucho estate, *Shaw* 8006; *Robertson* 9322.

Richardson, William, Edinburgh. Life-renter for the lands of Redford Green, Selkirkshire, *Haldane* 2174.

Riddell, Andrew, of North Sinton. Claimed as joint tenant for Roxburgh, in 1835, *Thompson* 7842, p. 30.

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Riddell, George, of North Sinton. Claimed as joint tenant for Roxburgh, in 1835, *Thompson* 7842, p. 30.

Rimers, William, of Galashiels. Claimed as life-renter for Roxburgh, in 1832, *Thompson* 7842, p. 23.

Ritchie, Rev. G., of St. Boswell's. Claimed as life-renter for Roxburgh, in 1835, *Thompson* 7842, p. 24.

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Roberts, George, of Galashiels. Claimed as joint proprietor for Roxburgh, 1836, *Thompson* 7842, p. 28.

Robertson, Alexander, of Minto. Claimed as joint proprietor for Roxburgh, in 1835, *Thompson* 7842, p. 30.

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